

In the Matter of: )  
 )  
Business Meeting )  
\_\_\_\_\_ )

COMMISSIONERS PRESENT

Karen Douglas, Chair  
James Boyd, Vice Chair  
James D. Byron  
Anthony Eggert

STAFF PRESENT

Jennifer Jennings, Public Advisor  
Jonathan Blee, Counsel  
Harriet Kallemeyn, Secretariat

John Sugar  
Paul Kramer  
Caryn Holmes  
Christopher Meyer  
Kristin Driscoll, Chief Counsel's Office

OTHERS PRESENT (\* via WebEx)  
(Interveners)

Ella Foley Gannon, Counsel to Tessera Solar  
Felicia Bellows, V.P., Product Development, Tessera Solar  
Loulana A. Miles, CURE  
Joshua Basofin, Defenders of Wildlife  
\*Kevin Emmerich, Basin and Range Watch  
Travis Ritchie, Sierra Club  
\*Bart Brizzee, Deputy County Counsel, San Bernardino County  
Cynthia L. Burch, BNSF Railroad  
Wayne Weierbach, Newberry Community Services District

PUBLIC:

Fred Stearn, Newberry Springs Realtor

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P R O C E E D I N G S

OCTOBER 28, 2010 10:08 A.M.

CHAIRMAN DOUGLAS: Good morning. Welcome to the California Energy Commission Business Meeting of October 28<sup>th</sup>, 2010.

Please join me in the Pledge.  
(Whereupon, the Pledge of Allegiance was received in unison.)

CHAIRMAN DOUGLAS: Good morning. We'll begin with Item 1 on the agenda. Energy Efficiency And Conservation Block Grant Program Guidelines. We are waiting for John Sugar - we are waiting for the person who is going to present. We'll pause for a few minutes, but I wanted to get it started so people in the phone didn't wonder where we were. [Pause]

Possible adoption of changes to the Energy Efficiency and Conservation Block Grant Program Guidelines to clarify conditions under which partnerships and individual jurisdictions may be reimbursed for expenses incurred before the execution of a funding award agreement. Mr. Sugar.

MR. SUGAR: Thank you. Is this on? There we go, thank you. This is quite antique. Madam Chairman, Commissioners, I am John Sugar from Commission staff. In May, the Commission finished approving Energy Efficiency

1 and Conservation Block Grant Awards for 208 small  
2 jurisdictions and partnerships of small jurisdictions.  
3 For the grant recipients, complying with Federal  
4 requirements has made the application procedures,  
5 Commission approval, and the path to final contract  
6 execution slow and complicated. This entire process has  
7 been considerably more time consuming and labor intensive  
8 than either the Commission or local jurisdictions had  
9 anticipated.

10 Our existing Guidelines for the Block Grant  
11 Program allow the Commission to pay expenditures only  
12 after the contract is fully executed with the signatures  
13 of both parties. We're encountering two situations with  
14 some of these applications. The first involves  
15 partnerships in which one recipient is managing grant  
16 funds for a number of jurisdictions. These applicants  
17 developed information on multiple projects. In at least  
18 one case, the efforts required extensive staff time and  
19 travel to complete the grant application. The second  
20 situation involves individual jurisdictions, where the  
21 grant recipients began work after the Commission approved  
22 of the grant, but before the contract was fully signed  
23 and executed. These jurisdictions appear to have acted  
24 in good faith, they were under pressure to get projects  
25 going. The jurisdictions which moved quickly risked

1 having to pay for projects for which they had no  
2 internal resources. Denying payment for these expenses  
3 conflicts with the program goals of creating jobs and  
4 helping local jurisdictions save energy. The impacts of  
5 the Commission rejecting these expenses would range from  
6 staff lay-offs to local financial hardship.

7 In order to keep our program moving ahead in  
8 these situations, staff recommends that the Commission  
9 adopt the proposed guideline changes. These will allow  
10 reimbursing partnerships for legitimate expenses incurred  
11 in preparing their applications and satisfying Federal  
12 requirements, and reimbursing individual Grantees for  
13 legitimate project expenses incurred following Commission  
14 approval of the grants prior to their final execution.  
15 Thank you.

16 CHAIRMAN DOUGLAS: Thank you.

17 MR. BLEES [presumed]: And Chairman Douglas, if  
18 I could, I just wanted to make a comment on the record  
19 about the applicability of CEQA to the proposed  
20 revisions.

21 VICE CHAIR BOYD: You have to turn your mic  
22 off, so his mic will work, John.

23 MR. BLEES: Thank you. The California Energy  
24 Commission's Legal Office has considered the application  
25 of the California Environmental Quality Act to the

1 adoption of the proposed revisions to the Energy  
2 Efficiency and Conservation Block Grant Guidelines and  
3 find that the adoption of these revisions is exempt from  
4 CEQA because it is not a project subject to CEQA,  
5 pursuant to Title 14, California Code of Regulations  
6 Section 15378(b)(4) in that it relates to the creation of  
7 government funding mechanisms or other government fiscal  
8 activities which are not about any commitment to any  
9 specific project which may result in a potentially  
10 significant physical impact on the environment, and also  
11 because it falls within the so-called common sense  
12 exemption pursuant to Title 14 in the California Code of  
13 Regulations Section 15061(b)(3), which indicates that  
14 CEQA only applies to projects that have a significant  
15 effect on the environment, which is defined in Public  
16 Resources Code Section 21068 and in Title 14, California  
17 Code of Regulations Section 15382, as being a substantial  
18 or potentially substantial adverse change in the  
19 environment. Thank you.

20 CHAIRMAN DOUGLAS: Thank you. Could you turn  
21 your mic off, please? This is a really great way of  
22 making sure people don't talk over each other.  
23 Commissioners, I wanted to say a few words on this topic.  
24 The Federal Stimulus Committee has thought long and hard  
25 about this item. We, the Commission, used to have a

1 practice of allowing work to begin at times before final  
2 execution of contracts, and tightening that up and  
3 requiring jurisdictions to wait until contracts were  
4 fully executed and signed by both parties was viewed by  
5 the Commission and certainly continues to be viewed by me  
6 as a good practice and an important practice, and  
7 something we should maintain. However, under these  
8 circumstances where local jurisdictions who, quite  
9 frankly, had the rules changed on them multiple times in  
10 the course of beginning and ending a grant application  
11 that took far longer and was more complex than any of  
12 them probably anticipated, in an environment where the  
13 pressure to move quickly and get projects on the ground,  
14 and get people working, was very very intense. I'm  
15 prepared to recommend and ask for your support for this  
16 item. I think that our practice of waiting for execution  
17 of contracts is a good practice, but in this case, there  
18 are some very compelling equity issues involved and I  
19 think we should go ahead and change the Guidelines to  
20 allow us to reimburse some of these legitimate costs.

21 COMMISSIONER EGGERT: So this is Commissioner  
22 Eggert. I just want to express my support for this item,  
23 as well. As Chair Douglas mentioned, the Stimulus  
24 Committee had considered this and taken in very good  
25 consult from our staff and legal division. I think,

1 particularly, this is specifically intended to address  
2 the local governments that are doing their best to try to  
3 establish these programs to develop energy efficiency  
4 activities within their jurisdictions, and especially in  
5 the time of challenged budgets, we're trying to be as  
6 helpful to them as possible, consistent with the mission  
7 of the Federal Stimulus Program, which is intended to  
8 maximize the energy savings and the benefits to  
9 California consumers. So, that's all.

10 VICE CHAIR BOYD: Having heard from the two  
11 members of the Committee who are recommending the item, I  
12 want to commend you for the effort you've made to look at  
13 this issue, and I want to commend you for the  
14 recommendation you are making today. And while, Madam  
15 Chair, I agree with your comments about we need to be  
16 concerned about relaxing existing rules and regulations,  
17 I want to put you and my fellow Commissioners on notice  
18 that I'm kind of looking at this as perhaps the beginning  
19 of a few other changes we might consider. I think I've  
20 observed during this whole process of dealing with the  
21 Economic Stimulus money and our own 118 program money, a  
22 government that is so risk adverse now that it is really  
23 hard to move at a time when we want to move money  
24 rapidly, first just to execute programs, but most  
25 importantly with Economic Stimulus, to stimulate the

1 economy and make jobs, and what have you. So, I really  
2 appreciate the recommendation you're making, but I do  
3 think we need to look at this as it applies to some of  
4 our other programs because those of us inside here are  
5 very frustrated day in and day out by our inability to  
6 move things for maybe honest concerns, but I think maybe  
7 we can work our way around some of those concerns and  
8 move things a little more rapidly, so I'm putting the  
9 Acting Deputy Director on notice that I would hope we  
10 look at some other areas, some of which you're intimately  
11 familiar with from your experience and research, and  
12 others that are of parallel interest in the 118 program,  
13 to see if we can come up with some exceptions and some  
14 streamlining that will help the people on the other end  
15 of the situation. I mean, we have rules that prohibit  
16 people from even spending their own money at their own  
17 risk on a project, in anticipation of receiving a grant  
18 from us. That is, if they spend that money, they're not  
19 allowed to claim it ever. Some of those things  
20 frustrated me somewhat, so let's hope we can address some  
21 of that. Thank you for providing me the opportunity and  
22 the excuse and the forum for putting this on the record.

23 CHAIRMAN DOUGLAS: Thank you, Commissioner  
24 Boyd, and I definitely hear and share some of your  
25 concerns, and it's always about balance between being

1 very careful with public funds and doing our job, which  
2 in the case of the Stimulus is to get money into the  
3 economy and stimulate the economy. Of course, the  
4 Stimulus Act itself contains those two contradictory or  
5 somewhat contradictory mandates, thou shalt move very  
6 very very quickly and stimulate the economy, thou shalt  
7 account for every penny of public funds, in new and very  
8 very very meticulous ways all the way through the chain  
9 of grantees and sub-grantees and contractors and  
10 subcontractors, to the very end of the life of this  
11 money. So, it's important that there is attention  
12 between those requirements, it's important we look at it,  
13 and, of course, we are planning to initiate a review of  
14 things that we could do better in our contracting  
15 process, and that's really from beginning to end. Our  
16 rules, the State's rules, are we practicing, are we up to  
17 best practices of the rest of the State, are there things  
18 we could do better? Are there areas where we might even  
19 recommend legislation? So, I really look forward to  
20 engaging in that. Commissioners, any other discussion on  
21 this item?

22 COMMISSIONER BYRON: Madam Chair, a couple of  
23 questions. I was fortunate to, I suppose, in that I  
24 didn't hear a lot of these concerns and complaints in my  
25 office, but I'm not surprised, and like Commissioner

1 Boyd, I'm glad that we're making these changes. But a  
2 couple of quick questions. Are we in complete compliance  
3 with all the Federal ARRA Block Grant requirements in  
4 making these changes?

5 MR. SUGAR: We've contacted the Department of  
6 Energy when these issues started to come up and, as far  
7 as they're concerned, from the mails we've received,  
8 these are appropriate uses of their funds.

9 COMMISSIONER BYRON: And were there other  
10 changes that may have been considered or actually should  
11 have been considered? Will we be seeing more changes,  
12 perhaps?

13 MR. SUGAR: The changes that we're bringing  
14 forward here allow for partnerships to be reimbursed for  
15 expenses that were incurred prior to Commission approval.  
16 We have a couple of situations where jurisdictions, where  
17 the individual jurisdictions, went ahead and began  
18 projects prior to Commission approval. They did work  
19 that was on their application and which was later  
20 approved, and we're still wrestling with those. Again,  
21 we face a situation where it appears they went ahead in  
22 good faith. We have not worked with them before, so  
23 they're not familiar with our - at least the Commission's  
24 - processes. And they had projects that, in one case, I  
25 believe an air-conditioner broke down that they were

1 planning to replace, and they're in a hot part of the  
2 State that required - they had to replace it. So, we're  
3 trying to determine whether we go along or not, with the  
4 Chief Counsel's Office, what the situation is there and  
5 whether we should come forward asking for the opportunity  
6 to reimburse them.

7 CHAIRMAN DOUGLAS: John, if I can - let me -  
8 and I think, Commissioner Byron, I believe it was an air-  
9 conditioner in a Senior Center, was that right?

10 MR. SUGAR: I believe -

11 CHAIRMAN DOUGLAS: And so it was the sort of  
12 decision, are we really going to tell them that they  
13 shouldn't replace an air-conditioner that broke down in a  
14 Senior Center because they hadn't fully executed their  
15 contract. That was one of the issues that came to our  
16 attention. And, John, maybe before I hand it back to  
17 Commissioner Byron, whose questions I've broken into,  
18 maybe you could remind us all how many local governments  
19 have signed agreements with the Energy Commission to  
20 execute projects?

21 MR. SUGAR: We have approximately 170  
22 agreements signed. I had to turn to John Butler, who I  
23 guess is in our moving target.

24 COMMISSIONER BYRON: So that's 170 out of the  
25 208 recipients?

1           MR. SUGAR: Out of the 208 recipients. And we  
2 anticipate getting the addition 38 in.

3           COMMISSIONER BYRON: One last question, Mr.  
4 Sugar. Why is it that we received this so late?

5           MR. SUGAR: My oversight.

6           COMMISSIONER BYRON: Okay, thank you.

7           VICE CHAIR BOYD: He just took the bullet.

8           MR. SUGAR: It's honestly there.

9           COMMISSIONER BYRON: And I'm feeling the pain.  
10 Okay, thank you. I would like to go ahead and move the  
11 item.

12          VICE CHAIR BOYD: Second.

13          CHAIRMAN DOUGLAS: All in favor?

14          (Ayes.)

15          VICE CHAIR BOYD: Did you hear all those, if  
16 we're only going to do one mic -

17          CHAIRMAN DOUGLAS: If there's a way to set up  
18 the system so we can have more than one or two  
19 microphones on if possible?

20          MR. KRAMER: No, I think there are two ways to  
21 set it up and you haven't set the wrong way.

22          CHAIRMAN DOUGLAS: All right, well, if we could  
23 set it the right way next time we have a business  
24 meeting, it would be great.

25          Item 2. Energy Efficiency And Conservation

1 Block Grants. Possible approval of an Energy Commission  
2 resolution to revise grant agreement terms, as necessary,  
3 to clarify the conditions under which partnerships and  
4 individual jurisdictions may be reimbursed for expenses  
5 incurred before the execution of the grant agreement.

6 Mr. Sugar.

7 MR. SUGAR: Madam Chairman, Commissioners, I'm  
8 John Sugar with Commission staff again. In order to  
9 implement the Guideline changes that you've just  
10 approved, staff must amend existing agreements with local  
11 jurisdictions. If you approve this resolution,  
12 Commission staff will proceed to amend the agreements  
13 with the partnerships and individual jurisdictions that  
14 have been affected. If you do not approve this  
15 resolution, we will amend the agreements and will bring  
16 them individually to the Commission as they're drafted.

17 CHAIRMAN DOUGLAS: Thank you, Mr. Sugar.  
18 Questions or discussion, Commissioners? My  
19 recommendation would be that we give staff the discretion  
20 to move forward by amending this resolution, rather than  
21 hearing them one by one, but I would entertain going  
22 another way.

23 COMMISSIONER BYRON: So, it's amending a  
24 resolution, but, really, I think it's a resolution that  
25 amends the EECBG, program funding agreements. Is that

1 correct?

2 CHAIRMAN DOUGLAS: Yes.

3 VICE CHAIR BOYD: Hearing no discussion, I'll  
4 move approval.

5 COMMISSIONER EGGERT: Second.

6 CHAIRMAN DOUGLAS: We have a motion and second,  
7 all in favor?

8 (Ayes.)

9 The item is approved. Thank you, Mr. Sugar.

10 MR. SUGAR: Thank you.

11 CHAIRMAN DOUGLAS: Item 3. Calico Solar  
12 Project (08-AFC-13). Possible approval of the Presiding  
13 Member's Proposed Decision and possible Errata for the  
14 Calico Solar Project. Mr. Kramer.

15 MR. BLEES: Excuse me, Chairman Douglas, Kristin  
16 Driscoll and Jennifer Martin-Gallardo spearheaded the  
17 Chief Counsel's Office advice to the Calico Committee, so  
18 I'm going to ask them to come up here.

19 CHAIRMAN DOUGLAS: Thank you, Mr. Blees.

20 MR. KRAMER: Good morning. I'm Paul Kramer,  
21 Chief Hearing Officer and Hearing Officer for this Calico  
22 case. we are representing the Committee of Commissioner  
23 Eggert, Presiding, and Commissioner Byron, the Associate  
24 member. This is a solar Stirling engine project similar  
25 to the Imperial Valley Project that you heard about over

1 a month ago, same technology, same developers, same  
2 basic capital. They are currently proposing roughly a  
3 664 megawatt project on approximately 4,600 acres. The  
4 local is about 37 miles east of the City of Barstow, just  
5 to the north of Highway Interstate 40 which heads out  
6 towards Needles. Unfortunately, the mouse isn't long  
7 enough, or the microphone cord, but the illustration we  
8 have up on the screen, and those of you who are at home  
9 who are using WebEx will see, as well, is a map of the  
10 project. When you look at the gray colored lines, you  
11 can see the various iterations of the project over time.  
12 It began as a roughly 850 megawatt project, which would  
13 have it going - there's a hatched area that is not apart,  
14 but it's private lands, but to the left or to the west of  
15 that, it went nearly to the top of the drawing, and then  
16 again on the east of the non-private area, it also went  
17 up nearly to the top of the drawing, and then quite a bit  
18 to the east, eventually coming back on a diagonal down  
19 towards the Interstate 40. That was about 8,000 acres,  
20 somewhere in that vicinity. One of the problems with  
21 that, that was discovered during the course of the case,  
22 was that that brought the project very near to the base  
23 of a mountain range, and the Federal Wildlife agencies  
24 and perhaps our own staff, as well, expressed a concern  
25 that that was going to cut off migration patterns for

1 various species, Big Horn Sheep being one of them, but  
2 even the Desert Tortoise, which is moving here as the  
3 main focus -- one of the main focuses -- along with the  
4 sheep, of the discussions in this case. So, the  
5 Applicant in their first iteration to try to reduce some  
6 of the effects that the project was causing brought the  
7 limits down. There is a gold line on the screen that is  
8 somewhat below the purple line, which was the original  
9 boundary. And that's basically what went to hearings,  
10 but the Committee, after considering the impacts and the  
11 effects of the project, decided that was too big a  
12 footprint and, in early September, we sent out an Order  
13 suggesting to the parties that they - I suppose primarily  
14 to the Applicant - but that they consider a further  
15 reduced footprint for the project, and that is what is  
16 before you today. They actually came up with about six  
17 options and the one that the Committee is recommending  
18 for your approval is actually kind of a hybrid of Options  
19 5 and 6 from that map and came up with - again, of the  
20 4,600 acre site, and allowed for the placement of about  
21 26,540 of the power units, and they're called  
22 SunCatchers, I think you saw actual pictures of them the  
23 last time for Imperial Valley. And for those who haven't  
24 seen them, think of a very large satellite dish from the  
25 old days. Now, if you had that size disk addition, you

1    could pick up satellites probably on other galaxies, but  
2    back in the old days, if you did something like that.  
3    And so instead of concentrating on radio waves on a  
4    receiver, it concentrates the sun and heats a little  
5    Stirling solar engine that basically operates as just an  
6    engine and drives an electric generator.  So, the way  
7    they're designed with this Applicant, they take about -  
8    they group 60 of those in a - I don't know if they call  
9    it a "pod" or what, and each of those groups can put out  
10   about 1.5 megawatts of power.

11               So, after the Applicants approved the new  
12   design, we had further hearings and produced a Presiding  
13   Member's Proposed Decision, and on September 25<sup>th</sup>, I  
14   believe, we have come back to you because there is some  
15   urgency, the Applicant is trying to qualify for a rebate  
16   of the Federal Investment Tax Credit which requires them  
17   to start construction by the end of the year.  The  
18   project is in two phases, although it's really three.  
19   Phase I has two components, but it totals 1,876 acres,  
20   roughly.  And Phase II is 2,737 additional acres.  But  
21   the first part of phase I, what you'll see called in some  
22   of the conditions Phase IA, is about 250 acres and that  
23   is so the Applicant can get a start to meet the  
24   requirements to obtain the Investment Tax Credit Rebate,  
25   which would - it's a significant incentive for the

1 project and the developers.

2           So, because we are going as quickly as we can  
3 to bring this to you, you have before you today an Errata  
4 that you just received today, for which I apologize, but  
5 there is a lot to it and it has taken awhile working with  
6 the Legal Office and others to produce this for you. We  
7 will have a few additional thoughts and we will have to  
8 orally describe to you as additions to the Errata their -  
9 I think perhaps one exception there, it simply can be  
10 made by reference to the comments filed by the parties,  
11 and I don't believe there's any controversy. We tried to  
12 get the controversial issues addressed in the actual  
13 Errata that we provided for you. But, again, I apologize  
14 that this is going to be a little bit complicated, but  
15 it's a 4,000-acre project, it has a lot of issues, and a  
16 lot of parties raising issues, and there's probably no  
17 way to avoid that. So, with that, I'll turn it back to  
18 you, Madam Chair, and recommend that you next hear from  
19 the Applicant.

20           CHAIRMAN DOUGLAS: Thank you very much, Hearing  
21 Officer Kramer. Can we now hear from the Applicant?

22           MS. FOLEY GANNON: Good morning, Chairwoman and  
23 Commissioners. I'm Ella Foley Gannon and I'm counsel to  
24 the Applicant, Tessera Solar. With me to my left is  
25 Felicia Bellows, who is Vice President of Product

1 Development for Tessera Solar. We would first like to  
2 thank the Committee for all of their extremely hard work  
3 on this project. As Hearing Officer Kramer was just  
4 describing, this has been a complicated project, it has  
5 been a project that has gone through a evolution during  
6 the hearing process, which Mr. Kramer just described, to  
7 its reduction of the project. There has been an  
8 exhaustive and sometimes exhausting look at the issues  
9 that have been raised by all the parties, and the  
10 Committee has done certainly an extraordinary job, I  
11 think, of giving careful consideration, making sure that  
12 the difficult questions were considered and aired, and  
13 that all parties had an opportunity to weigh in on these  
14 difficult conditions. And I think, as you can see in  
15 this proposed decision, this Errata, those views have all  
16 been given careful consideration and have been responded  
17 to, and we think have been properly resolved. We'd also  
18 like to thank the staff, they also did an extraordinary  
19 job. And it's worth mentioning that there are a couple  
20 things that made this difficult - or complicated -  
21 process even a little more challenging, one is,  
22 obviously, there was budgetary constraints that you were  
23 facing, that staff was facing, and despite those, the  
24 staff, again, has worked incredibly hard to consider  
25 every issue and to provide their views and to really

1 thoughtfully present the issues for your consideration,  
2 for the Committee, and ultimately for your consideration.  
3 And also, there is the issue of the Stimulus funding,  
4 which as, Chairman, you described this morning, it's  
5 important to stimulate the economy, and to do that, it  
6 needs to get out there, it needs to be spent, and as Mr.  
7 Kramer just described, it requires the Applicant to be  
8 able to be on construction this year. So, that has added  
9 an urgency to this and to the timely look at  
10 considerations, but, again, the Committee needs to be  
11 commended for making sure that they're allowing us the  
12 opportunity to be before you today, to hopefully be able  
13 to allow it to qualify for this funding, while at the  
14 same time still making sure that all of the requirements  
15 of State law, CEQA, and Warren-Alquist Act, have been  
16 complied with.

17           In talking about the process that it's been  
18 going through, in the beginning of our evidentiary  
19 hearings in Barstow in August, Commissioner Eggert set  
20 forth, I think, very eloquently sort of the challenge  
21 that is before you, which is balancing the need for  
22 meeting the critical demand for clean renewable energy,  
23 and at the same time considering and balancing the  
24 environmental impacts that are associated with meeting  
25 this sort of unprecedented challenge. And that process,

1 again, has been ultimately about drawing the line, so  
2 where is the appropriate balance between how the impacts  
3 can be allowed and how much energy can be produced by  
4 this project. And many times, you know, we felt that the  
5 line could have been drawn someplace else. You've heard  
6 we had several different iterations and even since  
7 September brought in six different options to be  
8 considered. So, we thought that the line could have been  
9 someplace else, but we respect and understand the issues  
10 that drove the Committee to make the recommendation they  
11 made, and we are pleased that it is allowing us to have a  
12 project that we think is an important and viable project.  
13 And so we applaud all of those efforts.

14 I think you will hear this morning from some of  
15 the Interveners and, in the record, it certainly is  
16 reflected. There have been many issues that have been  
17 raised about process that has been executed here in  
18 considering these changes, and as to whether that process  
19 has met the requirements of State law, and we would offer  
20 the view that it clearly has. These changes that have  
21 been made during these evidentiary hearings have all been  
22 reductions. They've all been reductions in the size of  
23 the project, they've ultimately been reductions in the  
24 amount of energy that's going to be produced, and they  
25 have been reductions in the impacts that will occur as a

1 result of the project. And so, I'm sure you're very  
2 well aware, CEQA's provisions are designed to allow for  
3 you to have a full airing of all the environmental  
4 impacts so that you are aware of them before you make  
5 your decision, and to allow the public to understand what  
6 the consequences of your decision will be. And here the  
7 public has had a tremendous opportunity to be involved in  
8 the process and to air their views. That's, I'm sure you  
9 are aware, under CEQA there are requirements that there  
10 be 30 days public comment, the Draft Environmental  
11 document. Here, the staff assessment originally was  
12 available for 90 days - 91 days - for public comment.  
13 Under CEQA, there is no requirement that there be any  
14 evidentiary hearings; in this process, there were seven  
15 full days of evidentiary hearings, many going very late  
16 into the night, as you probably have heard. Parties  
17 don't have a right to participate directly - other  
18 parties don't have a right to participate directly in  
19 most proceedings before other agencies; here, you get  
20 full intervention rights. And many many parties took  
21 advantage of that and participated, and Interveners were  
22 allowed to present written testimony, they were allowed  
23 to present oral testimony, to question witnesses, and  
24 they exercised that right with great diligence. And,  
25 again, it led to a very thorough hearing of issues and

1 changes significant, changes to the project. There also  
2 was the 30-day comment period on the Proposed Decision,  
3 again, under CEQA, that is not required, so I think that  
4 in really considering the procedural objections that  
5 parties have raised to this, it is important to consider  
6 how your process has not only complied with the letter of  
7 the law, but has really complied with the intent of it,  
8 as well, again, to make sure that you are informed of the  
9 impacts and that the public has been allowed to  
10 participate in that.

11           There are a couple of issues, that specifically  
12 I would like to address just briefly, before you. As Mr.  
13 Kramer had pointed out, one of the major issues that has  
14 been associated with this project is the impacts of the  
15 Desert Tortoise, and there has been many issues raised  
16 about the Desert Tortoise Translocation Plan, which is a  
17 minimization measure which is required in the Proposed  
18 Decision, which is also a requirement of U.S. Fish and  
19 Wildlife Service's Biological Opinion, the Bureau of Land  
20 Management's Record of Decision, and CEFG would also  
21 require this. Essentially, it is to make sure that the  
22 Tortoises that are on the project site will not be  
23 directly impacted by the project and will be moved to an  
24 appropriate location. There has been issues raised,  
25 saying that that plan needs to be before you and before

1 the public before you can act on this project, and we  
2 don't think that is required, nor do we think that would  
3 be wise. The translocation plan as is shown in the  
4 evidence is something that continues to be an evolving  
5 document because it involves adaptive management. These  
6 are things that there's many different factors that are  
7 going to be taken into account. And over the life of the  
8 project, there may be further understandings about how  
9 this should be done, things may happen in surprising  
10 ways. Having it be a plan that meets performance  
11 standards, that ensures the protection of the Desert  
12 Tortoise, is an appropriate way to handle this issue.  
13 And we understand that the Interveners disagree with this  
14 approach, and that they disagree with the plan, but we  
15 think that, consistent with the determination by the U.S.  
16 Fish and Wildlife Service, by the Bureau of Land  
17 Management, recommendations by your staff, CEFG, you can  
18 disagree with them, and that is an appropriate approach  
19 to take, and we think it will minimize impacts to the  
20 Desert Tortoise to a less than significant level, as  
21 recommended by staff, and as concluded in the Proposed  
22 Decision.

23 The other issue which there has been  
24 considerable discussion over in the last week, several  
25 weeks, is the conditions relating to soils and water,

1 particularly relating to sedimentation and erosion that  
2 may happen as part of the project. Originally, the  
3 project did include a detention basin as part of the  
4 project, and when the project was reduced, and as a  
5 result of further evaluation which had been done - let me  
6 go back one second - initially it was proposed that there  
7 would be detention basins if they were needed, and the  
8 thought was we thought there were going to be detention  
9 basins, but there was always a provision that the  
10 hydrologic study would be completed, and that whatever  
11 was required in that hydrologic study to meet performance  
12 standards that were included in the Conditions of  
13 Certification would be implemented. In reducing the  
14 project site, the detention basins were taken out of the  
15 project design and the same study was required, and so  
16 that study is done and it has determined that, in order  
17 to meet the performance standards which are included in  
18 the Condition of Certification, detention basins are  
19 necessary, then that's what has to be done. So, it is  
20 not really a change, it is a change in the default where  
21 we think it's going to be. And, again, we think that the  
22 performance standards are a very appropriate way to  
23 handle this issue. In the hearings, there was evidence  
24 by a number of parties that said, you know, it's easy -  
25 not easy, but it is determinable to say what are the

1 standards that have to be met. And that's an  
2 appropriate way to make sure that these impacts are  
3 reduced to less than significant. The Errata that was  
4 distributed this morning reflects a number of changes to  
5 the soil and water conditions, most which appear to be  
6 consistent with discussions that we had with other  
7 parties at the hearing Tuesday and the workshop that we  
8 did after that. There is one condition, however, we had  
9 suggested on Monday in our comments on the PMPD, we had  
10 requested that the Committee allow a phasing approach to  
11 these new conditions. The new conditions contain a great  
12 deal of detail on the studies that need to be completed  
13 and have a rather long timeline. It is probably going to  
14 take - we've roughly sketched it out what it will take to  
15 comply with the soil and water conditions, it will  
16 probably take about four months to meet all of the pre-  
17 construction conditions. Meeting those conditions will  
18 mean that the project does not get under construction  
19 this year, and that will mean that the ARRA funding will  
20 not be obtained, and the Stimulus money will not be  
21 available. And we don't think that that is necessary to  
22 ensure that there are no significant impacts to  
23 hydrologic resources, to water quality.

24 In the Proposed Decision, the Committee had  
25 included plans to address the impacts to soils and water,

1 and we believe that those plans are appropriate,  
2 particularly for what has been called Phase IA. Phase  
3 1A, we've also got 250 acres, it's essentially  
4 construction of the access road, as well as one of the  
5 pods, which will be the poles for 60 SunCatchers, not the  
6 SunCatchers themselves, but just installing the poles.  
7 Under the ARRA funding, you have to have made substantial  
8 progress on the construction, and we believe that having  
9 access roads, installing 60 foundations, will meet the  
10 DOE's requirements and will allow us to obtain the  
11 Stimulus funding which, again, is a very significant  
12 component of this project, in allowing this project to go  
13 forward. We think that the conditions that were included  
14 in the Proposed Decision are sufficient to protect water  
15 quality, particularly associated with the small phase of  
16 - the limited activities that would be included in Phase  
17 IA. We had submitted language which the committee has,  
18 and we would ask and urge that the Commission consider  
19 adding that condition to the soil and water condition so  
20 that the project can move forward. With that, again,  
21 we'd just like to thank you for your consideration of  
22 this project. We feel it's a good project, we think it's  
23 a project that is going to help California meet its  
24 needs, it's going to help reduce greenhouse gases, it's  
25 going to bring jobs and taxes to a part of the State

1    which has been severely impacted by the recession.  And  
2    for all of these reasons, we ask that you approve the  
3    project.  Thank you.

4                   CHAIRMAN DOUGLAS:  Thank you, Ms. Foley and we  
5    will take up your request after we hear from all parties.  
6    Can we hear from staff now, please?

7                   MR. MEYER:  Thank you and good morning, Chair  
8    Douglas, Commissioners.  Christopher Meyer, Project  
9    Manager for staff on the Calico Solar Project.  I just  
10   wanted to really thank the Committee for all the time.  I  
11   know the Committee has put several thousand pages of  
12   staff analysis in front of them, besides everything else  
13   they had to look through, and we really appreciate the  
14   really carefully looking through and considering what  
15   staff had to say, and giving us some very constructive  
16   feedback on that, that we could respond to.  So, staff  
17   really appreciate the time you put in to go over the work  
18   that we provided.

19                   I'm sorry, I'm remiss in introducing my staff  
20   counsel who, except for a short vacation, has been at my  
21   side through this entire proceeding, and we have  
22   appreciated having Karen Holmes, Christine Hammond and  
23   Steve Adams, as well as Jerry Babula, all helping out on  
24   this project as needed, it's been nice to have them  
25   behind me - or, in front of me - at this point, I'm going

1 to turn it over to Karen for a few comments.

2 VICE CHAIR BOYD: Vacation? Vacation? Who  
3 allowed a vacation?

4 MS. HOLMES: Thank you. I think what might  
5 make most sense is for us to hold our comments until we  
6 hear what the further additions to the Errata are. We  
7 don't have a prepared opening statement along the lines  
8 of the Applicants. We are prepared to address certain  
9 issues that we think will be raised in the course of this  
10 proceeding, particularly with respect to these additional  
11 changes that Hearing Officer Kramer mentioned. So, I  
12 think with that, I'd rather not waste time talking in  
13 generalities and let the other parties speak, and then if  
14 the Commission would like to look back to the staff and  
15 hear our responses to specific issues, we'd be happy to  
16 do that at that time.

17 CHAIRMAN DOUGLAS: Thank you, Ms. Holmes. I am  
18 now going to the list of Interveners and see if they are  
19 in the room or on the phone to be able to speak,  
20 beginning with CURE. Is CURE in the room or on the  
21 phone? Please come forward.

22 MS. MILES: Good morning, Commissioners,  
23 Chairwoman. CURE remains very concerned about the Calico  
24 Solar Project. We feel that the Commission has not  
25 independently analyzed the feasibility, the

1 effectiveness, or the likelihood of success of the  
2 Applicant's last minute mitigation proposal to allow  
3 construction directly around hibernating Desert Tortoises  
4 that are in their burrows.

5           Six days ago, the Applicant provided a new  
6 Translocation Plan to the parties and the Commission in  
7 this proceeding. The plan is unprecedented because it  
8 proposes to allow the construction to occur directly  
9 around hibernating tortoises with approximately three  
10 square feet of open area extending from the outer edge of  
11 the burrow, and I'm talking specifically about what the  
12 Applicant's attorney referred to as Phase IA, so that  
13 would be in the first 250 acres of that project  
14 development, and my understanding is that includes the  
15 access road, that means service is complex, and putting  
16 60 SunCatcher pedestals and vibrating them into the  
17 ground. And from our review of the Ivanpah, Abengoa,  
18 Genesis, Beacon, and Blythe Conditions of Certification  
19 regarding Desert Tortoise clearance surveys and  
20 construction, it is clear that the Commission has not  
21 recently licensed a project that would allow construction  
22 to occur adjacent to hibernating Desert Tortoises.  
23 Further, in the Calico proceeding, this proposal was  
24 never independently analyzed by staff in a document that  
25 was subject to public review. In fact, it could not have

1 been because this proposal has only been on the table  
2 Friday evening of last week by the Applicant in the  
3 Desert Tortoise Translocation Plan, and this was  
4 something that was not before the parties when we went to  
5 evidentiary hearings on the most recent 5.5 scenario for  
6 this project design. There are significant impacts  
7 associated with constructing right near Desert Tortoises  
8 in their burrows and, in fact, I brought a comment letter  
9 from our Biologist, Scott Cashen, relating to this and I  
10 apologize that we were only able to file it this morning,  
11 but this project has been moving quite quickly, so I did  
12 bring copies for everyone, and it is docketed  
13 electronically for on the service list and the Docket  
14 Office. So it's our position that, if the Commission  
15 goes forward and approves this project without analyzing  
16 the impacts associated with building right next to the  
17 Desert Tortoise burrows that are occupied, that the  
18 Commission will violate the State's requirements under  
19 CEQA.

20 My second point relates to CEQA's requirement  
21 that mitigation be effective and capable of  
22 implementation based on substantial evidence in the  
23 record. So, I am speaking specifically to the land  
24 purchase required in Bio-17, Conditions of Certification,  
25 which purports to mitigate for habitat loss on the

1 project site. The PMPD did not mitigate for loss of  
2 individual Desert Tortoises on the project site, and  
3 there is not substantial evidence in the record to show  
4 the purchase of land as compensatory mitigation is a  
5 defined feasible, effective, or capable implementation  
6 mitigation regime. And for example, we do not believe  
7 that there is evidence in the record to show that you can  
8 purchase off-site land and improve the carrying capacity  
9 on that land. The PMPD does not cite to evidence to  
10 support conclusions that 10,000 plus acres of high  
11 quality Desert Tortoise habitat is available for  
12 purchase, that the enhancement actions are likely to  
13 mitigate impacts to Desert Tortoise, or that habitat  
14 purchase and enhancement is likely to increase the  
15 carrying capacity on land for Desert Tortoise. If the  
16 Commission fails to support its decision on substantial  
17 evidence that impacts to Desert Tortoises are mitigated  
18 and that the land mitigation is adequate, then the  
19 Commission would violate CEQA.

20 My third point relates to the requirement that  
21 the Commission analyze significant impacts from the  
22 implementation of mitigation. CEQA requires that all  
23 potential impacts be analyzed and significant impacts be  
24 mitigated, including impacts that are from the mitigation  
25 measures themselves when mitigation measures, themselves,

1 cause significant impacts, so these are the secondary or  
2 indirect impacts of the project. The PMPD failed to  
3 provide mitigation for impacts to Desert Tortoise habitat  
4 at the off-site Ord-Rodman Desert Wildlife Management  
5 Area, and this was an area that was established as  
6 basically a Tortoise reserve for their protection and  
7 long term survival of Desert Tortoises. And this Desert  
8 Wildlife Management Area is the Applicant's proposed  
9 receptor location for most of the tortoises that would  
10 need to be translocated from the Calico site. In order  
11 to move Tortoises to the Ord-Rodman, they would need to  
12 do disease testing of the receptor host population in  
13 this off-site Desert Wildlife Management Area and the  
14 Bureau of Land Management Biologist testified that  
15 approximately 100 Desert Tortoises would have to be  
16 handled and disease tested in the off-site area, if any  
17 tortoises are moved from the Calico Project site to the  
18 Ord-Rodman Desert Wildlife Area. So this is really to  
19 get a sense of how many tortoises off-site are diseased  
20 and to make sure you're not moving a tortoise into an  
21 area where you have a diseased tortoise. However, there  
22 are impacts associated with handling and disease testing  
23 tortoises, and there is certainly evidence in the record  
24 that it could result in harm and mortality to tortoises.  
25 And staff testified that if - originally, they testified

1   that approximately 50 percent of the tortoises handled  
2   off-site could die as a result of that handling.  
3   Moreover, if more than five percent test positive for a  
4   disease in this off-site area, a different translocation  
5   receptor location would have to be found, and disease  
6   testing, handling and disturbance would start all over  
7   again in a new location, so, again, we're talking about  
8   potentially another 100 tortoises that would need to be  
9   tested. The PMPD fails to accurately establish the  
10  magnitude of the significant indirect impacts to Desert  
11  Tortoises in these off-site preserves as a result of  
12  project development. If the Commission licenses the  
13  project without identifying the receptor sites and the  
14  significant impacts to the receptor populations, this  
15  Commission will violate CEQA. The Commission also must  
16  have independent judgment in making its decision. The  
17  Commission's publicly noticed Environmental Review  
18  document must reply to the independent judgment of the  
19  Energy Commission. And Commission proposes in this  
20  document to rely upon the guidance of the U.S. Fish and  
21  Wildlife Service, and Fish and Game, and BLM, in  
22  determining adequate mitigation, and especially in  
23  establishing the performance standards for impacts to  
24  Desert Tortoise. The Commission certainly is within its  
25  right to consider the opinions of these agencies, but

1 must exercise its independent judgment and waive the  
2 evidence and expert testimony of the agencies before the  
3 Commission issues its decision, so it is not sufficient  
4 for the Commission to assume that the impacts will be  
5 mitigated to a level that is less than significant when  
6 the staff has not analyzed the Desert Tortoise  
7 Translocation Plan or the Biological Opinion that was  
8 filed by the Applicant last Friday evening.

9           The Committee's Proposed Decision violates  
10 CEQA's requirement that the project have a stable,  
11 finite, and accurate project description, and of course  
12 this has been held repeatedly by the courts that a stable  
13 project description is an indispensable prerequisite to  
14 an informative and legally sufficient environmental  
15 analysis. A project description that omits integral  
16 parts of the project may result in an environmental  
17 review document that fails to disclose all of the impacts  
18 of the project. And there have been a number of changes  
19 that have resulted since the original project was  
20 proposed, certainly not all of them have been bad, in  
21 fact, and we applaud the Committee's efforts to make this  
22 project a smaller project and to reduce impacts to Desert  
23 Tortoise, and we recognize that there has been a lot of  
24 impacts that have been reduced as a result of pulling the  
25 project site down from the Cady Mountains; however, we

1 don't believe that all of the changes have resulted in  
2 just a reduction of significant impacts. An example of  
3 that is the new proposal that they would need to put  
4 tortoises in the Ord-Rodman Desert Wildlife Management  
5 Area, that was not a part of the initial staff assessment  
6 that was circulated for the 91 days. And we feel that  
7 that type of information would need to be circulated to  
8 the public because that is evidence of new significant  
9 impacts.

10           Other changes are the detention basins have  
11 been removed, or potentially - the Applicant has proposed  
12 to remove them - that there are treated road services  
13 that were analyzed as pervious, completely pervious  
14 surfaces, and we're talking about probably around 200  
15 miles of roads that it's actually clear that those are  
16 not impervious surfaces, that they're more impervious  
17 than was assumed. Additionally, it is mentioned the  
18 project will rely on off-site locations. Finally, the  
19 project will require transmission upgrades that are part  
20 of a whole other project under CEQA, that are to date  
21 unidentified. Commission staff failed to analyze many of  
22 the significant impacts associated with a 67-mile Lugo-  
23 to-Piscach transmission line, an additional Piscach  
24 substation with 100 acres of disturbance in a location  
25 that has not been disclosed, and other transmission

1 upgrades that are all required in order for this power  
2 to be brought to market from this project site. For  
3 example, in the 67-mile Lugo-to-Piscah transmission line,  
4 we know that 10 miles of that line will be in an unknown  
5 location, it is not just rated up during a log in  
6 existing transmission corridor. Although the PMPD  
7 expressly recognizes that this upgrade is a part of the  
8 whole of the project, it does not consistently analyze  
9 the environmental impacts of this upgrade. And if you  
10 look at the cultural resources section, there is an  
11 analysis of the impacts of this upgrade and in the  
12 biological section there is not, however, the PMPD Errata  
13 states that the mitigation for impacts from the  
14 transmission line are widely known and understood. And  
15 I'm sorry, but it's not a proper CEQA analysis to just  
16 assume that these impacts will be widely understood in  
17 the mitigation, and that's why the agencies don't have to  
18 analyze it. And I can tell you that I've calculated the  
19 amount of acreage associated with the transmission, that  
20 is just at the Lugo transmission upgrade, and it's  
21 roughly equivalent to the acreage from the initially  
22 proposed project, which I believe was 13 square miles, so  
23 it is a significant amount of land that will be  
24 disturbed, it is land that was not ever subject to a CEQA  
25 analysis previously because the transmission line was

1 built prior to CEQA, and the parts that would be putting  
2 the re-conductor line into. And additionally, that  
3 transmission line is going to go straight through the  
4 Ord-Rodman Desert Wildlife Management Area, as well as  
5 the Yucca range, an area of critical environmental  
6 concern, so it's not just in our view the impacts and  
7 mitigation is widely known and understood, I think there  
8 will be a lot of challenges associated with building this  
9 transmission line, a quite significant environmental  
10 impacts.

11 My final point is related to the California  
12 Endangered Species Act. The Desert Tortoise is listed as  
13 critical - I'm sorry - is threatened under the California  
14 Endangered Species Act, and therefore impacts to the  
15 Desert Tortoise must be fully mitigated in accordance  
16 with California Department of Fish and Game Guidelines.  
17 Under these Guidelines, a permit may only be issued if  
18 the Applicant will minimize and fully mitigate the  
19 impacts authorized under the permit. All required  
20 measures must be capable of successful implementation.  
21 The Commission lacks any evidence to support a conclusion  
22 that its impacts to Desert Tortoise will be fully  
23 mitigated as is required by CEQA, as per my comments  
24 earlier today. In fact, the evidence in the evidentiary  
25 record clearly shows otherwise. And my comments are four

1 copies, so I will put them right up front. Thank you.

2 CHAIRMAN DOUGLAS: Thank you, Ms. Miles and  
3 we'll look forward to getting what you're handing out  
4 right now. Have you concluded your comments?

5 MS. MILES: Yes, yes.

6 CHAIRMAN DOUGLAS: All right, so I will move on  
7 and ask the Defenders of Wildlife if you are present.  
8 Please come forward.

9 MR. BASOFIN: Thank you. Joshua Basofin on  
10 behalf of the Defenders. I haven't prepared a statement  
11 today, but I will just say that I share the concerns of  
12 my colleagues at CURE. And we thank the Commission for  
13 their efforts to minimize the impacts of this project,  
14 particularly on Desert Tortoises. There are still many  
15 concerns that remain. The fact is, this project just  
16 isn't in the right location, and we have done quite a bit  
17 to minimize the impacts from the various configurations  
18 that have developed, but what we need to be doing is  
19 doing solar smart from the start, and that means finding  
20 sites that are preferably on private degraded land, land  
21 that was previously used for agriculture, that was mined,  
22 that has had significant disturbance. And at this site,  
23 we have essentially the opposite of that. We have a site  
24 that had in its original footprint significant Desert  
25 Tortoises, of 200 if you look at the early versions of

1 the Staff Assessment. It is an important Desert  
2 Tortoise connectivity area, it connects several different  
3 populations, it provides movement corridors, there is a  
4 Big Horn population, a dozen [sic] Big Horn Sheep  
5 population that is one of the largest in the State, about  
6 300 individual Big Horn Sheep reside in the Cady  
7 Mountains above this project. And although the draw-down  
8 of the northern boundary of the project in the recent  
9 configuration alleviated the impacts to the potential  
10 foraging contact for this Big Horn just below the base of  
11 the mountain, there are significant concerns, still, that  
12 the current configuration impacts the movement corridor,  
13 the north-south movement corridor for the project. The  
14 project is also part of the range of the Penstemon  
15 albomarginalis, the white-margined beardtongue, which is  
16 a Class B-1 CMPS plant, it is extremely rare, it has a  
17 last population in California in the Pischah region, and  
18 it is found on this site. So, this is a project that has  
19 a site that is not smart from the start. It's not a  
20 place where we want to be siting large scale solar  
21 utilities. And although there have been significant  
22 efforts on the part of the Committee, and we appreciate  
23 those efforts to alleviate some of those impacts, and  
24 they are significant, you know, a 45 percent reduction in  
25 acreage is significant. But my next point is really that

1 we've rushed through this process, and although the  
2 staff has, I think, done a heroic job of assessing some  
3 of the impacts of the project, we just haven't had enough  
4 time and we don't have enough data. Some of the data  
5 gaps that currently exist are that the Translocation Plan  
6 is still in draft form. It's still evolving. We still  
7 don't know what it's going to look like in the end. We  
8 don't know where the receiving sites for the translocated  
9 Desert Tortoises are going to be. We don't have  
10 parameters like disease testing and forage on the  
11 receiving sites to understand how successful that  
12 translocation will ultimately be in the end. We don't  
13 have an analysis of the north-south migratory corridors  
14 for the Big Horn and the Desert Tortoise. There is  
15 evidence in the record, and I won't rehash the record  
16 here, but there is some evidence that there could be an  
17 important migratory corridor underneath the railroad and  
18 through the culverts, underneath I-40, that's important  
19 for dispersal and genetic variability for these species.  
20 This project would entail significant fragmentation of  
21 habitat. As I mentioned, it's an important area for the  
22 Desert Tortoise, and it would fragment that habitat. We  
23 still don't have an Avian Protection Plan. And as CURE  
24 mentioned, we have a significant deferring mitigation  
25 that we still don't know what it's going to look like.

1 So, I'll keep my comments brief. As I said, I think the  
2 record at least would - defend or submit into the record  
3 as complete in this case, but we do still have some  
4 significant concerns.

5 CHAIRMAN DOUGLAS: Thank you. I would now like  
6 to ask Basin and Range Watch, are you here or on the  
7 phone? Basin and Range Watch?

8 MR. EMMERICH: Can you hear us?

9 CHAIRMAN DOUGLAS: We sure can.

10 MR. EMMERICH: I'm having trouble hearing you.  
11 You've been having phone problems for the past three  
12 days. But you can hear me?

13 CHAIRMAN DOUGLAS: We can actually hear you  
14 very well and I'm aware of some of the problems we've had  
15 in the past few days, so glad that you're able to speak  
16 to us. We can hear you loud and clear.

17 MR. EMMERICH: Okay, thank you. My name is  
18 Kevin Emmerich. I'm with a group called Basin and Range  
19 Watch, we are a small group of volunteers and a network  
20 of people. We are primarily concerned with preserving  
21 the ecological integrity of our Desert Southwest. We're  
22 concerned with preserving the open spaces. We're  
23 concerned with the people that would be affected by large  
24 energy projects that would have a very large impact. The  
25 Calico Project has definitely been a concern for us.

1 We've been following it for a while. As you all know,  
2 it's been immersed in a quagmire of unresolved issues.  
3 It is almost amusing to us that we keep hearing that  
4 they're having another evidentiary hearing, another  
5 workshop, like workshop after workshop, hearing after  
6 hearing, and it's very obvious that you're having a lot  
7 of problems resolving all of these issues. In fact,  
8 we've actually had an off-the-record CEC employee come up  
9 to us and admit to us that this project should have never  
10 been cited where is it right now, but we're kind of stuck  
11 with it right now, so we have some problems here. First  
12 of all, when I hear the Applicant ask for Federal  
13 funding, and I hear the CEC say, "Well, we have to  
14 accommodate the Applicant so they can get a ARRA grant,  
15 or Federal funding before the end of the year," I think  
16 that places a very unfair burden on the taxpayers not  
17 only for Federal funding, but for the fact that it is our  
18 public land that is being irresponsibly managed here. As  
19 far as the issues go, there are several of them. You  
20 know, the other Interveners have gone into many many  
21 details, and I'm not going to go into extreme details on  
22 these issues, but I would like to mention some of the  
23 things that concern us.

24 As far as biological resources go, this is  
25 tragic, this is an old growth desert, and you can

1 reconfigure this project all you want, you're still  
2 going to remove, what, 4,600 acres of old growth Mojave  
3 Desert habitat. This habitat includes a herd of Big Horn  
4 Sheep in the Cady Mountains, which is about 300. We do  
5 know that Big Horn Sheep consistently use [inaudible] for  
6 forage. It's very obvious that this is an important  
7 linkage zone and connectivity zone for the Big Horn.  
8 Mojave fringe-toed lizards - nobody is mentioning that,  
9 but that is a species of special concern. You are  
10 basically with this new configuration going to remove the  
11 entire habitat to the population of Mojave fringe-toed  
12 lizards located on the project site. And I haven't  
13 really seen much of any kind of good mitigation plan.  
14 You're supposed to buy land, maybe it's 1:1 or 3:1, we  
15 still don't know where that plan is. You haven't  
16 convinced us that you've mitigated any kind of sand flow  
17 that's going to maintain habitat for the species, nor  
18 have you convinced us that you've maintained any  
19 connectivity from this sand dune to the other sand areas  
20 that these species, as a native population, might migrate  
21 to. As Defenders mentioned, it's an important habitat  
22 for the white-margined beardtongue. You know, we're  
23 really not getting a lot of information about what are  
24 mirror - with the Applicant, because things like mirror  
25 watching, they're all over the place, and the amount of

1 water they're going to use. So we aren't really  
2 convinced that you know how much water is going to be  
3 used for this project and whether you even have that much  
4 water. For Desert Tortoise, the Fish and Wildlife  
5 Service is now saying that 50 percent of all Desert  
6 Tortoise that are relocated and translocated and have a  
7 mortality so that the 50 percent mortality in the host  
8 population, as well as the 50 percent mortality in the  
9 recipient population, due to things like preservation and  
10 carrying capacity, and whatnot. Look at Ivanpah, that  
11 was just approved, there was a lot of political momentum  
12 behind that, it was very difficult to expect any of the  
13 agencies to deny that application. The Applicant for  
14 that project, BrightSource, said there would be 36 on the  
15 entire site, but they are clearing the Phase I portion of  
16 that project and they have already found 27. A lot of  
17 these are just along the fence line and along the  
18 construction laid out area. I think they are going to go  
19 way past 36, in fact, one of their biologists actually  
20 told us there is probably about 140 Desert Tortoise on  
21 that site. Approval of this project for the Calico  
22 Project will indicate possibly a similar situation and  
23 contributes to the extinction of this species. Do we  
24 really want to do that? I'm learning a lot about the  
25 water issues and the flood issues from the BNSF Railroad

1 and finding those quite interesting. It sounds to me  
2 like you don't really have a plan to mitigate those very  
3 well, and it looks to me that possibly you might just  
4 litigate over that, and quite honestly, you would deserve  
5 it. But the thing is, if you do get litigated on that,  
6 think about how much tax dollars are going to go into the  
7 litigation. Again, is it really a good idea to approve  
8 this project? For the landowner, Mr. Jackson, I don't  
9 think you've ever resolved your access issues in getting  
10 to his land. Every time that's been brought up, there's  
11 been an avalanche of bureaucracy and I just haven't seen  
12 anything happen. I'll just conclude this by saying that  
13 you do have an opportunity right now to show that not all  
14 of these large energy projects are going to get approved.  
15 You have an opportunity to show that this is not a  
16 political agenda, that you are listening to us. We are  
17 asking you to deny this project in the name of preserving  
18 the desert, in the name of listening to popular public  
19 opinion.

20 CHAIRMAN DOUGLAS: Thank you, Mr. Emmerich.  
21 Sierra Club, are you here? Please come forward.

22 MR. RITCHIE: I'm Travis Ritchie with the  
23 Sierra Club. Commissioners, thank you for giving us the  
24 opportunity today to speak to you about this project. As  
25 I believe you know, the Sierra Club is strongly in favor

1 of renewable energy resources, it's one of our primary  
2 goals. We think it's a vital component of the effort to  
3 move ourselves off of energy sources that produce  
4 greenhouse gases that lead to climate change, that lead  
5 to the local air pollution problems. It's one of our  
6 primary campaigns for the Sierra Club. And frankly, in  
7 California, we're moving forward with converting  
8 thousands upon thousands of acres from the desert, off  
9 the pristine areas of the desert, to industrial power  
10 plants. And for many of those sites - for most of those  
11 sites - Sierra Club has not opposed that construction.  
12 This site, however, is different. And Sierra Club  
13 strongly opposes the Calico site. There are many reasons  
14 for this, some of my other colleagues have gone into  
15 them. To sum up, it's the wrong site for a project like  
16 this, it's too important a resource, the biological  
17 resources that will be sacrificed here are vast, they are  
18 very very important to the ecology of the Mojave Desert  
19 and they cannot be replaced. And they're extremely  
20 fragile, so they cannot be mitigated against,  
21 particularly with the mitigation measures that have been  
22 proposed in this project. The map behind you, I think,  
23 is interesting. It's hard still for me, and I've been  
24 working on this project for some time now, it's huge,  
25 that's 4,000 acres, over 4,000 acres behind you, which is

1 a vast vast project, and most of that area is completely  
2 undisturbed desert land. And the information in the  
3 record and the information that people have talked about,  
4 and people know that when you disturb desert habitat,  
5 it's permanent, even if this project is for 30 years and  
6 then there's clean-up that goes in afterwards, that  
7 desert will never return to what we've seen. The  
8 disturbances that we've seen in the desert from past  
9 disturbed areas - our history doesn't go back far enough  
10 to see that area be recovered. There are areas from  
11 World War II that you can still see the road marks from  
12 where these bases and training areas were. The desert  
13 doesn't recover in a way that potentially other  
14 ecosystems recover. So, when we put this project here,  
15 when we develop this massive 4,000 acre project, it's a  
16 permanent sacrifice of all these resources, and each of  
17 those resources - and Defenders of Wildlife and CURE went  
18 through the specific resources, each of them are  
19 extremely important and extremely vital, they are very  
20 rare, and we're never going to get them back. Now, the  
21 Applicant has professed that mitigation measures are  
22 adequate to reduce the impacts to that to below  
23 significant levels, and we do very strongly commend the  
24 Committee for pulling the program down and reducing some  
25 of the very significant impacts in the northern area.

1 But, again, it's not enough. And we don't believe that  
2 the mitigation measures are adequate. We don't believe  
3 that the record demonstrates that those mitigation  
4 measures are either feasible or accurate, and I would  
5 respectfully disagree with the Applicant's intention that  
6 there are clear performance standards and criteria for  
7 implementing these mitigation measures. I think that  
8 most of them, as part of this process, this very rushed  
9 process, have been kicked down the road. Many of these  
10 mitigation measures, we've simply said we will address  
11 later, we will look at later, and we will assume that we  
12 can fix these things later. And not only do we not have  
13 record to support that conclusion, the record shows that  
14 we probably won't be able to fix these measures later.  
15 And so if you consider this project, I hope that you will  
16 understand, this Commission right now has an opportunity  
17 to create a legacy of clean renewable energy in the State  
18 of California. California is already a leader in this  
19 effort and will continue to be a leader. What's happened  
20 in the past couple years with the fast tracking of these  
21 solar projects is unprecedented, and in many ways, I  
22 believe, it's extremely admirable that the Commission has  
23 taken the lead on moving these projects forward.  
24 However, I'm extremely concerned that future generations  
25 will look back at this period and they will look back at

1 the folly of rushing some of these projects through for  
2 what are essentially artificial deadlines, they're  
3 external political deadlines, and I realize that they  
4 have real practical economic effects in many  
5 circumstances, but they are artificial, they are  
6 external, we don't need to be rushing these tens of  
7 thousands of acres on pristine lands right now. We can  
8 stop, particularly with a project like this where we've  
9 identified the massive impacts that will happen. And we  
10 can re-site these projects, we can reconfigure these  
11 projects, not just by redrawing the lines within the  
12 existing footprint, but by really finding places where  
13 it's appropriate to put massive solar projects in the  
14 desert like this. And in doing that, we cannot only  
15 develop this amazing resource that California has the  
16 opportunity to provide to its people, we can also protect  
17 other amazing resources which are the diversity of  
18 biological resources that the desert provides. Those are  
19 important resources, they are public resources, and we  
20 can do this in a way that doesn't pit those two things  
21 against each other in a lose-lose battle. We can do it  
22 in a way where both of those resources are developed and  
23 protected. So, Sierra Club respectfully with this  
24 project recommends that you deny the approval and  
25 recommends that you do not develop this project. Thank

1     you.

2                   CHAIRMAN DOUGLAS: Thank you. Society for the  
3 Conservation of Bighorn Sheep. Are you on the phone?  
4 Society for the Conservation of Bighorn Sheep? If they  
5 do reappear, I'll call it again after we've gone through  
6 the Interveners. Bart Brizzee, San Bernardino County.

7                   MR. BRIZZEE: Yes, Bart Brizzee, Deputy County  
8 Counsel, San Bernardino County. Madam Chair, members of  
9 the Commission, on behalf of the County, I appreciate the  
10 opportunity to provide comment. We appreciate the time  
11 and effort of staff, the Committee, given the time  
12 constraints on the project, that we especially want to  
13 express thanks that at least a portion of the hearings  
14 were held in the County, although we know that was a  
15 great inconvenience to staff and others. The  
16 implications of the County of San Bernardino, which is  
17 the site of a number of these large solar generation  
18 projects is significant. In addition to the vast amounts  
19 of acreage taken up by the projects themselves, there are  
20 additional plots of private land that are required to be  
21 purchased and set aside as biological mitigation. No  
22 economic activities will be allowed on these lands,  
23 effectively, forever. We calculate that there are  
24 approximately 140,000 acres of potential Desert Tortoise  
25 habitat held in private unincorporated lands under County

1 jurisdiction. Between just this project and the Ivanpah  
2 project, which has already been referenced, in excess of  
3 of 20,000 acres will be set aside. I calculate that this  
4 is more than 31 square miles. The desert is vast, but it  
5 is not limitless. The private property within the desert  
6 is even more limited. More solar projects are in various  
7 stages of approval that will take up additional acreage  
8 if similar mitigation requirements are imposed. Just  
9 this week, we learned of the approval in Nevada of the  
10 Silver State North Project, a photovoltaic project in the  
11 Ivanpah Valley, immediately north of Primm. We  
12 understand that this project did not require any land  
13 acquisition by the Applicant, but a payment in something  
14 of the range of \$2 million for biological mitigation, and  
15 that appears to be based on 1:1 acreage calculation.  
16 This is contrasted with 2:1 land acquisition requirement  
17 imposed on Ivanpah by this Commission at the behest of  
18 California Fish and Game, and the similar mitigation  
19 requirement that is imposed on this project. We believe  
20 the project is in the same geographic area and recovery  
21 in it should be similarly treated in California in its  
22 component counties. It should not be put at a  
23 competitive disadvantage. The county encourages the  
24 Commission to continue working with the BLM and the State  
25 Federal Resource Agencies to moderate these private land

1 acquisition requirements in lieu of other species  
2 mitigation measures. And we also encourage the inclusion  
3 in these discussions of this and other counties similarly  
4 affected. Thank you. That concludes my comments.

5 CHAIRMAN DOUGLAS: Thank you, Mr. Brizzee. Is  
6 Patrick Jackson in the room or on the phone? Patrick  
7 Jackson? We will call Patrick Jackson's name again after  
8 we get through the list. Newberry Community Services  
9 District? BNSF Railroad?

10 MS. BURCH: Good morning, Commissioners. Mr.  
11 Kramer, is it possible to put our exhibits on the --

12 HEARING OFFICER KRAMER: Do you have a -

13 MS. BURCH: The BNSF Railroad has been actively  
14 involved in this process for about the last four months  
15 when we learned about the extent of this project next to  
16 the main line railroad. Let me just explain that this is  
17 the artery of being a railroad that goes along this piece  
18 of the desert, it goes to the Ports of Los Angeles, Long  
19 Beach, all the way to Chicago, and beyond, and it's five  
20 miles of track, and the proposed project, because if you  
21 look at the map up there, the proposed project is going  
22 to be both north and south of the main line. There were  
23 several issues - there are 10-11 miles of project, five  
24 miles of railroad. The number of issues that we  
25 identified early on, we took to the Applicant and

1 negotiated to the extent we could, through the  
2 resolution, we were successful in several areas of  
3 important issues. They have to do with the hydrogen  
4 lines, the transmission line locations, interference with  
5 ability to communicate with the trains in our sequence,  
6 and those issues. Those we have an agreement on, and  
7 those agreements were stipulated to on the record in the  
8 equipment to the project design, and they have been put  
9 into the conditions. And as of September 3<sup>rd</sup>, we thought  
10 we had resolved all but one very very important issue,  
11 which we called the [inaudible] [1:24] issue. So, let me  
12 talk about that for a moment. We have tremendous concern  
13 about the safety and the interference with real  
14 operations of 26,000 solar dishes on both sides of the  
15 track, for 10 or so miles, and brought our experts from  
16 within the railroad and a neuro-scientist from outside  
17 the railroad, in an effort to explain what the issues  
18 were, and they involved the ability of the engineer to  
19 see the signal, and to have adequate [inaudible]. Let me  
20 talk about that. If you can turn around, there are  
21 significant changes in elevations on the track in this  
22 area, it curves as you can see, as it goes through the  
23 site. There are two sets of signals, there are two  
24 crossings, there are six radius that deal with flood  
25 control underneath the railroad lines that are over 100

1 years old. So, we have a concern that all those  
2 Catchers, all those little dots that you see north and  
3 south, will cause flash blindness, will interfere with  
4 the ability of the engineers to process what they're  
5 seeing and not be distracted, from the ability to see the  
6 train signal. If an engineer cannot see the rain signal,  
7 under the Code of Operations, which was submitted, it is  
8 not yet part of this record, we asked that it be, we have  
9 to stop the train. If you stop the train at grades like  
10 that and curves like that, we can cause a derailment, we  
11 will stop the system, there will be major issues here  
12 with respect to interference with our operations and the  
13 flow of goods and interstate commerce. So, we have  
14 tremendous concerns about this. We asked that a study be  
15 done and, at the time we raised this issue in early July,  
16 when we first learned of it, we were told that the staff  
17 was working on a report on this issue. However, by  
18 August 9<sup>th</sup>, they had not been able to complete it. They  
19 asked us for information and then said they just couldn't  
20 get that piece done, and they submitted what they had  
21 done. What they had done is a study that was performed  
22 at Sandia Lab, where they took one Catcher and analyzed  
23 its impact on the ability of a person who comes in  
24 contact with it. That conclusion, that if you're within  
25 223 feet of the SunCatcher, it can cause visual damage.

1 Based on that, that alone, they concluded that you had  
2 to have a setback of 223 feet or more, that was the  
3 minimum, and they actually recommended 300 feet back in  
4 August for that setback, for motors on the roadways, the  
5 general public, and for the railroad trains. The problem  
6 with that is that it wasn't actually calculated from the  
7 rail lines elevations and it wasn't calculated to  
8 consider all these other distractions, what we call the  
9 "Waldo Effect" when you're trying to find the signal and  
10 there are these halos of discs all around you, all around  
11 the area you're trying to define the signal. So we  
12 requested a site specific study be performed that would  
13 analyze the safety of these operations vis a vis the rail  
14 line. It has not been performed, there are no standards  
15 in the documents on the conditions to address this issue,  
16 and there wouldn't be an ability to establish standards  
17 because no study was done, for which you could do  
18 railroad standards, so this is a major, unmitigated, and  
19 serious impact on the BNSF Railroad. And I would just  
20 add that there is a proposal that Applicant work with us  
21 as a condition to put on our signals and to change with  
22 the kind of technology we have in our signals, the kind  
23 of lighting. I've heard expert testimony explain that  
24 neither of those would deal with these issues, so there  
25 is no evidence in the record to support that mitigation

1 measure, and the law is that we actually control the  
2 decisions as to what is safe on the railroad. So we  
3 submit that issue on the record and it was unresolved  
4 and, I believe, unresolvable based upon the statements  
5 and the studies that were performed for this. And I  
6 would also note that the Applicant performed no studies  
7 on this, submitted no evidence to the CEC. The other  
8 major outstanding issue here is with respect to soils and  
9 water. And we have worked very hard and so has the  
10 Commission, Commissioner Eggert, Commissioner Byron, and  
11 staff, with us on this issue, but we have - if you look  
12 at that map, you can see on our map better than on the  
13 other map, the alluvial fan and the watersheds that come  
14 across the northern part of the site, and the southern  
15 part, okay? What the evidence states, what the findings  
16 are, that those watersheds drain right across to the  
17 Southwest and then into [inaudible] [1:30], railroad.  
18 The Applicant actually had done significant work on this.  
19 Up to September 3<sup>rd</sup>, it has over a thousand pages of  
20 reports, it had proposed, I believe, at least six  
21 alternatives, all alternatives based upon this report  
22 required detention and debris basins and retention  
23 basins, to be basically placed throughout the site. We  
24 had struck - however, we were concerned that they might  
25 not be in the right places for the railroad bridges, that

1 had been constructed and had been operating without  
2 incident for 100 years, to ensure that the water, it's  
3 velocity and its location where it entered the right of  
4 way, would still be consistent with our system. The  
5 Applicant agreed with us that we had a concern and that  
6 they would find a hydrology study for us to confirm that  
7 the plans they had would, in fact, protect the right of  
8 way. So we thought that had been put to rest, we were  
9 satisfied with that approach prior to September 3<sup>rd</sup>,  
10 however, once the Order came out September 3<sup>rd</sup> reducing -  
11 I wanted to mention one other thing - and the FEIS that  
12 came out from BLM, I believe even in the DEIS, they  
13 stated that, if you had a reduced footprint, you'd have  
14 to move the detention basins and the debris basins down  
15 with the reduced footprint. And one of the alternatives  
16 evaluated both in your document and with the BLM just  
17 2,000 acre project. So, in any of those scenarios, you  
18 had significant amount of basins, and they covered about  
19 600 acres of land. So the first thing that was  
20 eliminated by the Applicant on September 7<sup>th</sup> were all the  
21 debris and detention basins, and I believe now what we  
22 have are some detention basins for the maintenance  
23 facility, and that's it. That's it. We do not believe  
24 that there is any record to support approving this  
25 project without the detention and debris basins. We

1 believe there is substantial evidence, and the only  
2 evidence in this record says that the project has to have  
3 these basins in. And our concern is that, although staff  
4 has been good enough to hear us and leave that in as  
5 something to be considered in the future, the fact is  
6 that the amount of megawatts being contemplated for this  
7 facility, if you look at the density of the SunCatchers  
8 that are being proposed, and this is a drawing submitted  
9 by the Applicant, to ensure what their plan is of  
10 development on these acres, there is no room for 600  
11 acres of basins. We also believe that the conclusion of  
12 many adequate study on glare and glint could very well  
13 conclude that there needs to be further setbacks for  
14 certain areas where SunCatchers shouldn't be placed, and  
15 those areas at this point would be - there is no room for  
16 them within the megawatts that are considered. Now, what  
17 we do notice that you did put into the Errata, although  
18 we haven't had adequate time to digest all of it, but we  
19 do know that you put in a provision that says that there  
20 could be a decrease down to a certain number of megawatts  
21 for the debris basin issue, but that's only one issue and  
22 we do not believe it adequately reflects the amount of  
23 acreage that will be needed to address the amount of  
24 basins needed for the project if the evidence previously  
25 developed is relied on. So those are two major areas of

1 focus for us. We worked very hard, as I alluded to, by  
2 the Applicant and staff, to revise the soil and water  
3 conditions to try and address the issues that we think  
4 are critical, given that the Applicant is now requesting  
5 that these basins be deleted and detention debris basins  
6 be deleted. There are a number of reports that were  
7 always required in the soil and water conditions. We  
8 requested one additional one because -- it's called the  
9 Infiltration Report - because we do not believe that  
10 there's been adequate understanding of what the amount of  
11 impermeability is to be dealt with by these basins and of  
12 flow. That's been put in, but with the exception of that  
13 one report, everything else is going to be part of it all  
14 along. There is an Order, however, that needs to be  
15 followed for you to have the basic information you need  
16 to develop the next slate of reports, and in the workshop  
17 that concluded late on Tuesday, we said we had to get  
18 back from experts a list of what those are and what order  
19 they should be in, and I just would like to put those in  
20 the record since there's been no opportunity since  
21 Tuesday to do that. The plans call for a topographical  
22 survey and a geology survey. We believe that those first  
23 two surveys need to be completed and they can be  
24 performed and approved together. Once you have that  
25 information, you can perform this Infiltration Report

1 that we've asked to be performed next, which is now, I  
2 believe, Soil and Water 13. After that, the next report  
3 you would do would be the hydrology report and we believe  
4 that, again, that should be reviewed and approved before  
5 you go to the next steps. The next steps include the  
6 Scour Analysis and the Pole Stability Report. Both of  
7 those, we think, can be developed and approved together,  
8 and they then inform what is called the Design Plan,  
9 which require Soil and Water 8, which is the first  
10 [inaudible] [1:36:41] under Soils and Water 8. Once  
11 you've had that plan, you know where you're going to put  
12 the Catchers and you can then develop a strong water  
13 control and flood protection design, that's the step at  
14 which you will know where everything goes to protect the  
15 impact of the Catchers and the facilities both onsite and  
16 offsite. You want to protect the facilities onsite  
17 because that actually does affect the off-site, as well.  
18 After that, after the storm water control flood  
19 protection design, the next document that would be  
20 finalized, and these are all things that should be  
21 considered in developing the DESCP, and we believe that  
22 should be the next step and it should be approved before  
23 you move on. There are a number of reports that you can  
24 develop at that point in time, up to your preconstruction  
25 period, within the Decommissioning Plan, the Groundwater

1 Monitoring Plan, the Construction Slip, the Industrial  
2 Slip, the Waste Conservation and Alternative Water Supply  
3 Plan. So we request that there be a correction in the  
4 Soil and Water Conditions to put these in their right  
5 order and require the approval of the development, in  
6 that order. I'm not quite sure how to do that in this  
7 process because of how rapidly it is moving, but we all  
8 talked about this with staff, the BNSF, all the other  
9 Interveners that were present on Tuesday, and the  
10 Applicant, and it does need to be taken care of. That  
11 would bring me, then, to 1A. We learned that, I guess it  
12 was Friday, if not Monday, that the Applicant is  
13 considering requesting that they've read this project now  
14 up into a 1A, that would mean that these reports somehow  
15 get shortened and because, again, no detail, I can't tell  
16 you what that means. What I would stress, that we do not  
17 believe that you can develop the location of the  
18 SunCatchers, the locations of the Basins, the locations  
19 of the upgrade separation, and the other crossing, unless  
20 you know what these other project features are going to  
21 be. And so we would have to address that when we know  
22 what they're talking about and what we oppose at this  
23 point, we think they need to be completely done, they  
24 can't be broken up in pieces, and into an adequate job.  
25 So, we would ask you to consider that. Last, but not

1 least, since we've not had any real time and there's not  
2 a redline of the changes, is a Motion for Reconsideration  
3 at this point the only way to make changes or request  
4 changes in this process?

5 CHAIRMAN DOUGLAS: Once the Commission makes  
6 the decision, the Motion for Reconsideration, if you'd  
7 like to bring one, would be appropriate, but not at this  
8 time because we don't -

9 MS. BURCH: No, I'm saying, assuming that you  
10 act today and we haven't had time to really review the  
11 comment on the changes that are in - we got it at 9:15  
12 and we couldn't even [inaudible] in 30 minutes, what - is  
13 there any other mechanism for changes? Like, for  
14 instance, to correct the schedule of the plans, how can  
15 we do those things?

16 CHAIRMAN DOUGLAS: Well, there is an amendment  
17 process and a compliance process, there's a possibility,  
18 but I think I'd like to put your mind at ease and say  
19 that, because we got the Errata so late, and because of  
20 the complexity of the issues, my plan is to hear parties,  
21 hear public comment, and take a brief recess so that - a  
22 recess and a lunch break - and most likely a brief  
23 Executive Session, and I'll describe that when we get  
24 through this, so that everyone will have an opportunity  
25 to closely read the Errata. All right, I'm going to go

1 back to Interveners who did not respond, they may not,  
2 in fact, be on the phone, but just in case - Society for  
3 the Conservation of Bighorn Sheep, Patrick Jackson, and  
4 Newberry Community Service District, are representatives  
5 from any of these organizations on the phone today?  
6 Before we go to public comment, I'd like to ask if BLM  
7 has a representative on the phone and, if so, would you  
8 like to say anything? I have a note that Chris Huntley  
9 may be on the phone?

10 MR. HUNTLEY: No, this is Chris Huntley,  
11 Biological Staff.

12 CHAIRMAN DOUGLAS: Oh, sorry. Thanks, okay, so  
13 we don't have BLM on the phone. Is there anyone from  
14 Fish and Game on the phone. All right, what about the  
15 Regional Water Quality Control Board? No. All right, at  
16 this - Newberry. I'm sorry -

17 MR. WEIERBACH: This is Wayne Weierbach with  
18 the Newberry Community Services District. For some  
19 reason I'm put on a list of [inaudible] [1:42:39] are now  
20 able to comment?

21 CHAIRMAN DOUGLAS: I'm glad you are able to  
22 comment. You're an Intervener, please make your comments  
23 or your statement.

24 MR. WEIRBACH: Well, the comment we'd like to  
25 make is we'd like to emphasize the fact that, in the

1 event of the need for emergency services to this  
2 project, outlying community of which Newberry Community  
3 Services District will operate the Newberry [inaudible],  
4 we would probably be one of the first additional  
5 resources, that member in the County that would be relied  
6 on to provide services, and mitigation to the financial  
7 impact this would have does in fact need to be addressed,  
8 and I just wanted to emphasize that.

9 CHAIRMAN DOUGLAS: Thank you.

10 MR. WEIRBACH: Okay, thank you.

11 CHAIRMAN DOUGLAS: Is there any public comment  
12 in the room at this time? All right, I will go to public  
13 comment on the phone, but I also am reminded it might be  
14 informative to the public, and certainly will be to us,  
15 if we ask staff counsel, you had held back and not wanted  
16 to speak until you heard the other parties, to make a  
17 brief response, and I wanted to see if the Commissioners  
18 had questions for the Applicant. And so, if you're  
19 hanging on the phone for public comment, if you could  
20 please indulge us a little longer, we'll get to you.

21 MS. HOLMES: Thank you. I think I'll make just  
22 two brief comments, first with respect to the proposed  
23 changes to the PMPD. We, too, have not had the  
24 opportunity, and so it's a little difficult for us to  
25 weigh in on it at this point. We did note that some of

1 the recommendations that we had made in our filing with  
2 respect to the soil and water conditions, I'm not certain  
3 about the other sections, so hopefully if we see anything  
4 that causes us concern, we'll have the opportunity to  
5 return to this after lunch.

6 Finally, with respect to the phasing proposal,  
7 staff had the opportunity to discuss this with the  
8 Regional Board, who does not have the concern about  
9 phasing, and as long as the phasing proposal is  
10 consistent with the Record of Decision, I think that  
11 staff doesn't have any concerns about it.

12 CHAIRMAN DOUGLAS: Thank you. Commissioners,  
13 any questions you'd like to ask before we wrap up with  
14 public comment and recess? Or would you like to hear  
15 public comment? All right, is there anybody on the phone  
16 who would like to speak at this time?

17 MR. STEARN: Fred Stearn, Newberry Springs.

18 CHAIRMAN DOUGLAS: Please go ahead.

19 MR. STEARN: Good morning, Commissioners. I'm  
20 a real estate agent in Newberry Springs and I've  
21 submitted along with some other landowners in the area  
22 all sorts of comments into the State and Federal  
23 documents regarding significant - or potentially  
24 significant impacts on the private landowners up there  
25 and impacts that are required under the [inaudible] of

1 CEQA, including noise, visual, drainage, hydrogen gas  
2 hazards, glint and glare, aesthetics, and access. And  
3 those people might live with all the negative impacts,  
4 [inaudible] access, and there is just the no response for  
5 review that I can see in either Federal or State, CEC  
6 reports on those objections and complaints. I wondered,  
7 and I would wonder if there might be a condition you  
8 could put on the project if you do approve it, if it  
9 survives, if you might require the Applicant to require -  
10 there are about 80 private landowners and they're going  
11 to be land mined by this project if it goes ahead as  
12 proposed, if you could require that any bridge built over  
13 the railroad right of way would allow those 80 property  
14 owners, the owners of those 80 properties, some of them  
15 are multiple parcels, some are one owner, but there ought  
16 to be some requirement that would guarantee access into  
17 that area north of the railroad tracks for these people.  
18 I think that concludes my remarks and I thank you very  
19 much.

20 CHAIRMAN DOUGLAS: Thank you for speaking  
21 today. Is there anybody else on the phone? Is there any  
22 other public comment on the phone right now? There  
23 doesn't appear to be. So, let's see, Commissioners, the  
24 Bagley-Keene Act allows the Commission to deliberate in  
25 closed session on an adjudicative decision and, in

1 addition, in light of some of the legal questions and  
2 controversies raised by some parties, we certainly have  
3 the ability to consult with our Chief Counsel's Office.  
4 So, what I would like to recommend is that we recess the  
5 Business Meeting, reset an Executive Session, a closed  
6 session, for 1:00 p.m., if the Commissioner schedules  
7 allow, and then we come back here at a time certain, say,  
8 2:00 or 2:15. Does that sound agreeable to you? All  
9 right, so, Commissioner.

10 COMMISSIONER WEISENMILLER: That sounds good.  
11 There are a couple of clarifying questions I had which  
12 might -

13 CHAIRMAN DOUGLAS: Absolutely, please.

14 COMMISSIONER WEISENMILLER: So, the first  
15 question for the staff is, Applicant has submitted today  
16 significant reasons to certainly [inaudible] [1:49:15].  
17 Has the staff had an opportunity to review those  
18 proposals and, so, do you have any comments on this?

19 MS. HOLMES: I'm aware of two submittals by the  
20 Applicant, one was proposed changes to soil and water,  
21 one through 13 or 14. We worked with the Applicant and  
22 with BNSF and with CURE on those on Tuesday in our  
23 workshop, and what was served on all the parties reflects  
24 staff's and everybody else's response to those. I think  
25 the specific changes that you are referring to is the

1 change they were discussing earlier this morning  
2 regarding phasing and, as I just said, assuming that  
3 there's no conflict with the Record of Decision, our  
4 conversations with the Regional Board, and our own review  
5 of our responsibilities indicate that the phasing  
6 proposal can work.

7 HEARING OFFICER KRAMER: If I can add, the  
8 Committee did modify somewhat what was said on Tuesday  
9 afternoon, so it's not quite the same, it was basically  
10 changing time issues, but there was some tweaking of what  
11 the parties gave us.

12 VICE CHAIR BOYD: If I might, a question of  
13 either staff or Mr. Kramer, to what extent does this  
14 document that was just referenced speak to any of the  
15 issues that were brought to our attention today?

16 MS. HOLMES: What we tried to - I don't know  
17 which document you're referring to -

18 CHAIRMAN DOUGLAS: The Soil and Water.

19 VICE CHAIR BOYD: Soil and Water -

20 MS. HOLMES: The document that was filed after  
21 Tuesday, or the document that Mr. Kramer brought?

22 VICE CHAIR BOYD: The document handed out to us  
23 this morning.

24 MS. HOLMES: BRF [ph.], I can't speak to that.

25 VICE CHAIR BOYD: No.

1 MS. HOLMES: My understanding is that the soil  
2 and water proposal for phasing that the Applicant has  
3 made, staff has indicated, again, as long as there's no  
4 concerns or conflict with the Record of Decision, we  
5 don't have a problem with it. Burlington and Northern  
6 Santa Fe has indicated in their comments earlier this  
7 morning that they believe it's inappropriate for the  
8 reasons that Ms. Burch expressed, I think it was one of  
9 the last items she discussed.

10 HEARING OFFICER KRAMER: And this was first  
11 given to the parties on Monday, the document we are  
12 referring to.

13 VICE CHAIR BOYD: Thank you.

14 COMMISSIONER WEISENMILLER: So, I had a  
15 question for the Applicant. Under the Federal Cash Grant  
16 Program it has to be a project with substantial  
17 construction to be eligible, and as I understand it,  
18 typically the PPAs for projects have lower prices if you  
19 get a cash grant and higher prices if you don't get the  
20 cash grant, but not getting into the PPAs for this  
21 particular case, there are two ways to comply with the  
22 substantial construction, one of them is the [inaudible]  
23 [1:52:11] five percent test, and the other is the  
24 continuous construction aspect. Obviously, there have  
25 been Treasury - there have been better rulings, but

1 information posted on what that means, so in terms of -  
2 it looks like a June, then it's July and the subsequent  
3 September, potentially additional ones coming, but you've  
4 chosen to go with continuous construction - or  
5 construction, which I understand they are now going for  
6 continuous. The final question is, obviously, some of  
7 the issues in this case will be easier if you are going  
8 with the five percent test, State [inaudible], so I just  
9 wanted to understand whether there is any potential for  
10 the Applicant to do that.

11 MS. BELLOWS: On this one, there is no  
12 potential to do that simply because we did not plan on  
13 that. The regulations in regard to that are a bit  
14 unclear and we felt much more comfortable being able to  
15 move forward on their construction as a means of meeting  
16 the grant. In addition, this is no secret, we made clear  
17 to the Committee in the past, is that our DOE financing  
18 has not come in yet, they are in the process, and this is  
19 one means of us doing this, using our own equity funds as  
20 similar rate.

21 COMMISSIONER WEISENMILLER: Excuse me, by "DOE  
22 financing," are you referring to a loan guarantee?

23 MS. BELLOWS: Yes.

24 COMMISSIONER WEISENMILLER: Thank you.

25 CHAIRMAN DOUGLAS: Other questions?

1           COMMISSIONER EGGERT:  So, I guess this is a  
2 question for the Chair, in terms of sequencing, I'm  
3 wondering, do you think it would be useful to address  
4 some of the questions that came up during the parties'  
5 comments this morning?  Or should we -

6           CHAIRMAN DOUGLAS:  I think that, if anything  
7 that you think would be helpful for deliberation, we  
8 should discuss and get out now, particularly if you have  
9 questions of any of the parties.

10          COMMISSIONER EGGERT:  Okay.  I do have a few I  
11 think would be useful.  I think there have been a number  
12 of questions that relate - well, actually, okay, let me  
13 start with this.  I think there have been a number of  
14 questions relating to the process, and given those  
15 comments that have come in, well, prior to this hearing,  
16 I did ask the legal office to take a look at the process,  
17 whether or not the Committee is following all of the  
18 proper procedures and notifications and timing for public  
19 comment as it relates to our statutory requirements of  
20 the Warren-Alquist Act, and I wonder if maybe they would  
21 be willing to make a statement based on their findings.

22          MS. DRISCOLL:  This is Kristin Driscoll from  
23 the Chief Counsel's Office.  We believe that the  
24 Commission has followed all of the procedures required  
25 under both the Warren-Alquist Act and the California

1 Environmental Quality Act. The Warren-Alquist Act  
2 requires a 30-day comment period on the PMPD and has no  
3 requirements for a similar public comment period on any  
4 revised Staff Assessment. This is consistent with the  
5 Act, itself, which requires a reasonable opportunity for  
6 public comments through a public hearing process. Also  
7 under CEQA, this Commission has a certified regulatory  
8 program through its Power Plant Certification process  
9 that uses a document as a substitute for an EIR. This  
10 substitute EIR does contain a description of the project  
11 and the agency's findings regarding any environmental  
12 impacts. The PMPD is the only document that includes the  
13 agencies, and not just staff, which is a party to this  
14 proceeding. The agencies' findings are environmental  
15 impacts, therefore that document is the document  
16 necessary for a CEQA 30-day comment period, if one  
17 applies through the CEQA process, and it doesn't already  
18 apply through the Warren-Alquist Act process. We also  
19 believe the parties and the public have had very  
20 reasonable opportunity to comment, both written and oral  
21 comments at public hearings, and throughout this process,  
22 and have contributed to the development of the PMPD.  
23 Therefore, we believe that this process has complied with  
24 both the Warren-Alquist Act and CEQA.

25 CHAIRMAN DOUGLAS: Commissioner, obviously

1 we'll have ample opportunity to dig in to Chief Counsel  
2 with following questions with them, but I think that the  
3 compelling need right now is to get information from  
4 parties [inaudible] before the last session.

5 COMMISSIONER EGGERT: Absolutely. So, I guess  
6 this is a question that could go to either the Hearing  
7 Officer, the Applicant, or the staff, probably this first  
8 one would go to the staff. There have been some claims  
9 about specifically the ability to comply with CEQA given  
10 the lack of a Desert Tortoise translocation plan or a  
11 final translocation plan that has had the benefit of  
12 public review, or even a staff review. And also, I'll  
13 blow in there some specific claims that the mitigation  
14 does not properly account for the off-site impacts to  
15 Desert Tortoise from the translocation, itself. This was  
16 something I did notice was addressed in the Errata, but I  
17 thought maybe Mr. Kramer would want to elaborate on that.

18 HEARING OFFICER KRAMER: Well, on the question  
19 of having the plan before us, the approach the Decision  
20 is taking, because there is not a plan, is to have a  
21 condition that describes the standards, and these are  
22 Federal standards from the U.S. Fish and Wildlife Service  
23 that come from their Desert Tortoise protection or  
24 recovery office, you know, we're going to the source, the  
25 people who are primarily responsible in this country at

1 the Federal level for taking care of the Desert  
2 Tortoise. We have a condition, I believe it's BIO-19, is  
3 that right - I think it's 17, yes, that requires the  
4 translocation plant, when it is produced, comply with the  
5 standards that are in the guidance referred to by me from  
6 that office. There was a point there in our hearings  
7 where the expert witness for CURE and Sierra Club, Mr.  
8 Cashen, spent some time explaining and, if you will,  
9 complaining that we were not complying with those very  
10 guidelines, so, among other things, we made sure that we  
11 wrapped those into the condition. But when you don't  
12 have the final document, in some ways it's part policy  
13 matter, and there probably are some legal aspects, as  
14 well, but this is not the only place in this Decision and  
15 the current approach to this project where we are setting  
16 performance standards and leaving it to the skilled  
17 staffers from four State and Federal agencies, Department  
18 of Fish and Game, Energy Commission, Fish and Wildlife  
19 Service, and DOM to then apply those standards to the  
20 document. If people are not satisfied with the decision  
21 they make, they can - there are appellate mechanisms in  
22 our compliance process and you can appeal a determination  
23 that the plan was adequate, for instance. But what  
24 you're doing is, rather than micromanaging that with  
25 yourselves as Commissioners, you're setting the ground

1 rules and sending it off to the staff to do the work, so  
2 it's not an unusual way to do business. You could go the  
3 other way, but obviously you will be doing that for a  
4 little while here because the plan only arrived very  
5 recently. There was, of course, a draft plan that was -  
6 I don't think it's fair to say roundly criticized by many  
7 people in the earlier parts of this proceeding, but it  
8 was sent back for more work and now it's available. As  
9 far as the off-site impacts, for the impacts that the  
10 locations where the tortoises are going to be relocated,  
11 or "translocated" is the term, until recently, it was  
12 pretty speculative to try to decide that a particular  
13 site was going to be a candidate. Nobody has thus far  
14 really complained about more than the fact that the  
15 tortoises in those relocation areas might suffer by the  
16 introduction of new tortoises, either healthy tortoises  
17 that could out-compete them for the available food and  
18 shelter, or diseased tortoises that give them disease.  
19 But the decision, and I think more clearly after the work  
20 done on the language a little bit in the Errata, is meant  
21 to convey the message that the Commission believes that  
22 in providing the habitat mitigation and the habitat  
23 enhancement, that we are both mitigating for the loss of  
24 habitat on the project site because it's fenced off,  
25 tortoises are not going to be able to go there anymore,

1 and we are also mitigating for the predicted fact or  
2 expectation that some of the tortoises that are  
3 translocated are going to die, and some of the tortoises  
4 in the translocation are going to die, and then there's a  
5 third, Fish and Wildlife Service wants a control group to  
6 be monitored and tested, and that includes taking their  
7 blood to check for disease, and attaching a radio to some  
8 of them, and that's going to cause some of them to be  
9 stressed out, as well. So, we think we've taken care of  
10 all those impacts. If there are some other kind of  
11 impact on these sites that we're not really sure we know  
12 exactly where they are, well, at this point, it seems  
13 speculative to try to figure out what those effects might  
14 be and, again, I don't think anybody has been trying to  
15 focus our attention on impacts other than those to the  
16 tortoises in those areas.

17 COMMISSIONER EGGERT: Thank you. I guess if  
18 any of the other folks who want to make a comment on that  
19 or -

20 MS. FOLEY-GANNON: Yes, I concur with Mr.  
21 Kramer's discussion and I would also draw your attention  
22 to the fact that the complaint is that these direct  
23 impacts haven't been looked at. We heard hours of  
24 testimony on this issue. This was discussed at great  
25 length, both in written testimony and my testimony, and

1 in cross examination of the witnesses. So, again, I  
2 think this is one of those issues where the Interveners  
3 disagree and, as Mr. Kramer has also pointed out, the  
4 other agencies have looked at this issue and the U.S.  
5 Fish and Wildlife Service found it appropriate to issue a  
6 biological opinion, which considers all of the impacts  
7 associated with the project, as well as the Translocation  
8 Plan. Fish and Game weighed in on this issue, the Bureau  
9 of Land Management has issued a Record of Decision and  
10 the Right of Way Grant, which considered this issue. So,  
11 there are a number of agencies with considerable  
12 expertise dealing with these resources, who have looked  
13 at this issue, and they have made a determination, and we  
14 think it's appropriate that the PMPD came to a similar  
15 conclusion and made a similar recommendation. We  
16 recognize that other parties disagree, I'm sure it's not  
17 unusual we are receiving some disagreement, and you have  
18 to resolve those disagreements. So, we think that issue  
19 has been aired and you will make a conclusion there has  
20 been a recommendation in front of you.

21 CHAIRMAN DOUGLAS: Other parties?

22 MS. MILES: At this point -

23 CHAIRMAN DOUGLAS: If you could identify  
24 yourself, please?

25 MS. MILES: Sure, this is Loulena Miles with

1 CURE. At this point, it is not speculative what would  
2 be in the Desert Tortoise Translocation Plan because that  
3 is the document that was docketed last week, however, the  
4 staff - to my understanding, the staff has not fully  
5 analyzed that document, and we would recommend that the  
6 staff do analyze that and provide an analysis that is a  
7 publicly available document. Also, we wanted to say that  
8 we don't believe the performance standards that were laid  
9 out from U.S. Fish and Wildlife Service can be met by  
10 this Desert Tortoise Translocation Plan, and for reasons  
11 that we submitted in testimony from Scott Cashen in prior  
12 hearings, for example, one of the performance standards,  
13 I believe, is that you would have a piece of land for  
14 off-site mitigation that is the same size as the project  
15 site, and the two off-site Desert Tortoise translocation  
16 receptor areas were not equivalent, also that there would  
17 be a continuity of area between project site and these  
18 off-site lands, and that there isn't actually continuity  
19 in that. I can't actually recall all of the issues off  
20 the top of my head, but there were a number of additional  
21 issues that we felt the performance standards could not  
22 be met based on what has been provided by the Desert  
23 Tortoise Translocation Plan, and that leaves us with a  
24 lot of concern about is there going to be a judgment call  
25 as to which performance standards will get met and which

1 ones won't, and they are actually considered guidelines  
2 by the U.S. Fish and Wildlife Service, rather than  
3 required measures. And so it isn't clear to us exactly  
4 what the mitigation would have to meet, what the standard  
5 really is. And I do want to draw your attention to the  
6 Biological Opinion that was filed by the U.S. Fish and  
7 Wildlife Service. The Applicant submitted it also last  
8 Friday, and in that document it concluded that they did  
9 not feel that the impacts would be fully mitigated to  
10 Desert Tortoise, based on the record before them in this  
11 proceeding. And I drew out the page to that - no, I'm  
12 sorry, not in my most recent comment, but in comments we  
13 submitted on the PMPD, and I submitted an excerpt from  
14 the biological opinion that stated that. And it might  
15 actually be also referenced in Scott Cashen's comments  
16 that we submitted this morning.

17 COMMISSIONER EGGERT: Anything from staff on  
18 the two issues?

19 MR. MEYER: I know we covered that.

20 COMMISSIONER EGGERT: I think probably another  
21 item of significance that has come up in these  
22 discussions is the issue of the adequacy of assessing the  
23 downstream impacts to the transmission activities and,  
24 again, I would ask if any of the staff - again, this is  
25 something that did get called out in the Errata.

1 HEARING OFFICER KRAMER: Why me? Well -

2 MS. HOLMES: I don't care, either one of us.

3 HEARING OFFICER KRAMER: The last 10 miles is  
4 one of the transmission lines - the route has not been  
5 picked, as I understand it, so you - the kinds of things  
6 that you analyze are specific to where transmission  
7 towers are going to be located, and without that  
8 knowledge, you're simply stuck. But it's not - this is  
9 not something the Commission approves, this is beyond the  
10 point of first interconnection, so the Commission's job  
11 is to analyze what is known about the transmission  
12 connection at the time it makes its decision, and then  
13 that's as far as you can go. But the next agency is  
14 probably the PUC that is going to have to approve the  
15 natural route and all the design specifications. They're  
16 subject to CEQA and they're going to have to conduct  
17 their own analysis, and one of the things I'll be  
18 recommending to you later is that you find that the  
19 transmission upgrades will be under the jurisdiction of  
20 another agency, and that agency can and should apply the  
21 appropriate mitigation to any impacts it finds from that  
22 project.

23 MS. HOLMES: I would just like to add one - I  
24 think staff is very concerned with the concept that  
25 somehow the Energy Commission is required - or could be

1 required - to wait until another agency with  
2 jurisdiction on that other aspect of the project acts.  
3 Staff and the other parties did their best to find out  
4 what we could about those downstream impacts, to analyze  
5 them to the extent that we could, we identified the types  
6 of mitigation measures that could mitigate some of the  
7 impacts that we identified, and as Mr. Kramer pointed  
8 out, the next step belongs to PUC, they will be reviewing  
9 the proposal by the utility to build the line, and one  
10 would presume that they would start with the analysis  
11 that the Commission has of this. But I think that a  
12 concept that the Commission is somehow required to wait  
13 for the PUC to act before it can approve a project is  
14 dangerous, and it is not necessary.

15 COMMISSIONER EGGERT: I guess a few more if  
16 that's okay. Well, actually, while this on my mind, this  
17 is probably more of a request, the soil and water was an  
18 area that we did start a tremendous amount of time and  
19 effort on because of the legitimate concerns of the BNSF  
20 and their properties, they said this is an extremely  
21 active rail corridor, a train every 15 minutes, or  
22 something like that, and so we did want to include the  
23 appropriate level of protection. I guess, between now  
24 and when we reconvene, what might be useful to know is,  
25 as the Committee had put forth in the Errata, the

1 revisions to soil and water, I think what the idea is,  
2 or the attempts, was to try and make it reasonable in  
3 terms of the length of time that it might require to  
4 actually conduct the analysis, and there are no real  
5 dates in there that do say within, you know, a certain  
6 number of days, and I guess if that was something that  
7 adds up to four months, I would ask that maybe you try to  
8 recalculate that to see if that is actually the case.  
9 And then I guess I would also ask BNSF also to take  
10 another look at the proposal from the Applicant on IA,  
11 which I think we have taken at least a preliminary look  
12 at with the rest of the Commission and we'll need some  
13 time to digest that to see whether or not there would be  
14 any potential flexibility that allows for earlier work to  
15 be conducted. And I think the other is that there have  
16 been some mentions of the corridor activities and there  
17 is sort of the issue associated with the East/West  
18 corridor for different species in the North to South, and  
19 again, I'll ask either our Hearing Officer if he wants to  
20 add anything to the record on that, or the staff to  
21 address some of the points, that you come up. And  
22 actually, just to prelude this, it wasn't an explicit  
23 direction from the Committee in terms of the reduction of  
24 acreage, though it was certainly recognized by the  
25 Committee that the reduction in the project acreage from

1 the Cady Mountains would provide a substantial increase  
2 in the east to west corridor movement, a potential for  
3 the species of concerns, that was something that had been  
4 brought up, was that there were some pitch points leading  
5 up to the mountain range and the expectation that that  
6 would be significantly remediated from the east to west  
7 direction. But, go ahead.

8 HEARING OFFICER KRAMER: Okay, well, just to  
9 note, and this is already in the record, but that there  
10 was a dialogue on August 5<sup>th</sup> at the Evidentiary Hearing,  
11 largely between Mr. Otahal, the Biologist from BLM, and  
12 myself, and I'll just let people go back to the  
13 transcript to look at that, but one of the things Mr.  
14 Otahal was saying in my reading of this discussion was  
15 that the east to west corridor was much more important  
16 than the north to south was, especially with regard to  
17 this project, because - I'm sorry I can't bring the map  
18 up quickly, but basically what I took from what he said  
19 was that there are limitations having to do with the  
20 highway, the freeway, and there are only certain places  
21 where there are, I guess, suitable sites, culverts, that  
22 go under it for things like the sheep, I suppose - sheep  
23 would probably jump the road, but - but for the  
24 tortoises. And some other practical details about the  
25 way things are laid out, meaning that they're not a party

1 - it kind of gets to the western third of the project,  
2 kind of lines up with some of the best ways to get across  
3 the highway on that side, and then he also was implying  
4 that, on the eastern side, if they go around the edge of  
5 the property, that's another good place to get that point  
6 of view through the railroad, as well. So its bottom  
7 line seemed to be, and that is something the Committee  
8 took notice of, is that the north to south routes in the  
9 vicinity of the project were just thought to evaporate  
10 and nothing to get real excited about, as opposed to the  
11 east to west routes.

12 COMMISSIONER EGGERT: So, I think, Chair,  
13 looking for some guidance here, I do have a few  
14 additional questions, but I think some of them may be  
15 addressed just specifically to counsel in closed session,  
16 so I would -

17 CHAIRMAN DOUGLAS: Well, let's save those for  
18 counsel, then, and let's let everybody - before we break,  
19 oh, I'm sorry, Commissioner Boyd.

20 VICE CHAIR BOYD: Well, I'd like to ask a quick  
21 question and maybe make a comment. Well, I'll save the  
22 comment for later. Some of my questions have been  
23 answered. But I just wonder if the Applicant, or even  
24 Mr. Kramer, but particularly the Applicant, didn't help  
25 by responding to the concerns raised primarily by the

1 railroad, but even Basin and Range Watch brought up the  
2 flood issue, drainage issues, the alluvial fan, the  
3 debris retention basins, and the lack of studies, as  
4 alleged by BNSF with regard to the geographical and  
5 typological surveys needed to address that, and their  
6 concern that there is a serious situation. Do you have  
7 any comments that can help me understand this, your  
8 perspective on this? Oops.

9 MS. FOLEY-GANNON: Give me the mic and I can  
10 respond. The evolution of the process, and it is true,  
11 some of the information that the Applicant has been  
12 considering with regard to these issues is not in the  
13 record, and it's not before you, and I can get to the end  
14 of this, but that's what we think the performance  
15 standards are necessary for, to ensure that there is not  
16 a significant impact. But what has happened is, during  
17 the project design, initially there was the determination  
18 that there would be these detention basins that would be  
19 at the northern edge of the project, so you know, near  
20 the basin of the mountain. And when the engineers were  
21 looking at this, they made a determination that that is  
22 going to be primarily helping reduce maintenance issues  
23 of what was going to have to be done on the site, and  
24 that without those basins, you're going to have to go  
25 through and there's going to have to be a lot more clean-

1 up that's going to have to be done around the  
2 SunCatchers, themselves, and so it was looked at as two  
3 different ways, one is that, if it was necessary to  
4 control that flooding, to do that. But what we thought  
5 was primarily going to be needed for was for actually  
6 making it easier for maintenance on the site. In looking  
7 at it, when the construction engineering team who is  
8 looking at it went further, they came back and they said,  
9 "We actually don't think these detention basins are going  
10 to be necessary." We were already very far along in this  
11 process and we didn't want to change the project, and so  
12 we were going to maintain those detention basins. There  
13 were discussions that there would be a study that was  
14 going to be done and what was necessary would be  
15 implemented. At that point, we were anticipating that  
16 the study was going to show that the detention basins  
17 weren't going to be necessary, and we wouldn't need to  
18 install them. Again, they were in the northern part of  
19 the site so that would not have affected the lay-out of  
20 the larger project at all, it just would -- there would  
21 have been detention basins installed in that portion of  
22 the site. We, in response to the requests to reduce the  
23 project, obviously were also looking for ways to be able  
24 to maximize the energy generation that could happen with  
25 the project. We had also had hired an expert who had -

1 who was Dr. Chang, who had worked for Tessera Solar on  
2 the Imperial Valley Solar Project. Dr. Chang had  
3 actually first been a consultant for the U.S. Army Corps  
4 of Engineers, and he is a recognized expert in erosion  
5 and sedimentation issues and has worked extensively in  
6 the desert environment, so he had been involved in  
7 Imperial Valley, so we asked him to take a look at the  
8 site and say what his recommendations were, and his  
9 recommendations were that the detention basins weren't  
10 necessary. His report has been criticized by BNSF and  
11 several of the other Interveners, and we recognize that  
12 there needs to be further studies done to make a final  
13 determination, but we think - we anticipate that the  
14 answer is going to be we don't need the detention basins.  
15 But we have agreed and we are committed to doing whatever  
16 is necessary to meet the performance standards. And you  
17 will see in this Errata and in the Proposed Decision,  
18 many of the performance standards aren't directed exactly  
19 at those issues, it's saying "you can do no harm to the  
20 railroad." And we have to have reports that show that.  
21 And that's the only way we are going to be able to move  
22 forward, so we think their issues can be addressed, they  
23 will be addressed, again, we anticipate it's not going to  
24 require detention basins, but if it does, they will be  
25 installed.

1 VICE CHAIR BOYD: Thank you.

2 COMMISSIONER WEISENMILLER: Just a follow-up  
3 question with Paul Kramer. Early on, you foreshadowed  
4 that there might be additional corrections to the Errata?  
5 I thought it might, thinking through the matter, it might  
6 be useful to provide at least some signals there other  
7 than, you know, grammatical changes and clean-up.

8 HEARING OFFICER KRAMER: Yeah, both parties,  
9 staff and the Applicant, proposed some new language to  
10 deal with the donated lands question and so we're going  
11 to adopt those changes to the extent that they're  
12 consistent. And at our last hearing, nobody had any  
13 problems with that. And then, the changes that staff is  
14 proposing with the cultural resources and other changes  
15 to land use. And traffic and transportation,  
16 socioeconomics, we have a clarification of staff of a  
17 couple things, but also from the Applicant about - they  
18 say confirmation of some of the add-on jobs and how much  
19 money is going to be spent, and when you have a project  
20 that downsizes, you want to make sure that those years  
21 are still good and you're using them as a justification  
22 in Part 3 overrides. So we have that. And a small  
23 change to noise from the Applicant, we have - I think  
24 we've got all the soil and water changes - well,  
25 actually, we still need to hear positions. And changes

1 to bringing those land use provisions, we'll harmonize  
2 those, a visual resource change, a minor one, and to the  
3 override findings, just some of the numbers. And I'll  
4 note that, I don't know if I said it earlier, but we did  
5 recognize in the Errata now that, you know, now that it's  
6 been clearly brought to our attention that the detention  
7 basin issue might lower the output, that we said that it  
8 could go lower and we could still override. Based on  
9 what the Applicant said at the last - in the conference,  
10 we think the threshold is as low as 100 megawatts lower,  
11 somebody thinks it's going to go possibly even lower than  
12 that, it would be good to let us know so that the  
13 Commission can consider now if they are willing to go  
14 even lower than that.

15 COMMISSIONER BYRON: Wasn't there one other  
16 issue, Mr. Kramer, about the Federal protection of the  
17 wildlife corridor?

18 HEARING OFFICER KRAMER: No, that is already  
19 talked about in generic findings and there's no impact,  
20 especially with the explanation I made a few minutes ago,  
21 I think there's enough in the record to explain to a  
22 review in court what the rationale was.

23 CHAIRMAN DOUGLAS: Other questions.

24 COMMISSIONER BYRON: Madam Chair, I think one  
25 that I think will be helpful to us in Committee, in

1 Executive Session. First of all, I think the  
2 Interveners did an excellent job in their expressing  
3 their high level of concerns about retrying the case, and  
4 I don't think it's really necessary for us to do that in  
5 the business meeting - in this deliberation. I believe  
6 the Executive Session will help with counsel and Mr.  
7 Kramer and the Committee to be able to answer and address  
8 most, if not all of the concerns that have been raised,  
9 except I think there is one unifying concern that  
10 Commissioner Weisenmiller got into somewhat, and so I'm  
11 going to turn to the Applicant and just ask if they can  
12 address this briefly and it's the issue of why it's  
13 important to consider for approval of this project today.  
14 We've had some explanation around that, but if you'd go a  
15 little bit further with regard to satisfying this  
16 Commission's interest in your ability to correctly  
17 interpret and satisfy the ARRA requirements, that's one  
18 question. And the second, I think, that's going to be  
19 crucial to the Commission is, have you also considered a  
20 new schedule of time for potential Petition of  
21 Reconsideration, and any potential litigation for the  
22 Supreme Court in your schedule.

23 MS. FOLEY-GANNON: I'll ask Ms. Bellows to  
24 answer the funding questions. With regard to the  
25 schedule, the schedule is very tight, there's no doubt.

1 There is not a lot of extra time, so if there was a  
2 Supreme Court litigation that was accepted and that the  
3 Court enjoined any action on the project, bearing a  
4 hearing on such a petition, it would preclude  
5 construction this year, there is no doubt. We don't  
6 think that that would happen, we don't think that - we  
7 think, first off, it would be very questionable whether  
8 the Supreme Court would accept a petition to consider an  
9 appeal on this process, we think, again, this has been a  
10 very very thorough process. We think that the decision  
11 that is proposed for you is completely supported by the  
12 record. It's a chance. There is a possibility that that  
13 could happen, and that could preclude construction this  
14 year, there is no doubt. But, again, when we're looking  
15 at this, we think that you have done, as I said earlier  
16 in the exhaustive look at these issues, and you have the  
17 record, and we feel highly confident that it is  
18 supported.

19 MS. BELLOWS: In terms of ARRA, you know, as I  
20 mentioned before, we are most definitely counting on  
21 that. There is a huge difference for the project in  
22 terms of being able to begin construction in 2010 and if  
23 there aren't grant [ph.], not. Obviously, from an equity  
24 shareholder's perspective, being able to obtain almost 30  
25 percent coming back at you over time as you bring out

1 [inaudible] technologies case where you bring on the  
2 megawatts, [inaudible], it really drives down the costs.  
3 And you know, you mentioned, Commissioner, you mentioned  
4 earlier about PPA, our PPA is with Edison, Edison is here  
5 today, they are one of the toughest movers and shakers  
6 I've ever had to deal with, I had to negotiate a PPA with  
7 them. And, you know, the utility stance and your stance  
8 generally is that financing risk is the developer's risk,  
9 not the utility's risk. And I certainly can tell you  
10 it's not a PPA, but we'll just leave it at that.

11 CHAIRMAN DOUGLAS: Other questions? Oh, Ms.  
12 Public Advisor?

13 MS. JENNINGS: Yes, Chair Douglas, may I ask a  
14 question before you adjourn?

15 CHAIRMAN DOUGLAS: Please.

16 MS. JENNINGS: I did reach Mr. Jackson, he had  
17 an emergency this morning, he may be able to participate  
18 this afternoon, and I was wondering if you would be  
19 willing to entertain his brief comments at that time?

20 CHAIRMAN DOUGLAS: Absolutely. So what I think  
21 we'll do in terms of more comment from the parties this  
22 afternoon is we'll hear from Mr. Jackson, we'll ask other  
23 parties to speak just to the Errata, and any changes that  
24 there may or may not be in their positions by view of  
25 having the opportunity to study the Errata and having an

1 opportunity to talk potentially over lunch if there's  
2 anything that you have to talk about with other parties  
3 that might involve outstanding issues. But we'll ask  
4 parties to limit the scope of the second round of  
5 comments this afternoon to those two topics since we've  
6 heard from you thoroughly this morning.

7 I'd like to ask Mr. Blees to give us a brief  
8 Chief Counsel's Report in case there are any other items  
9 that we would want to cover in Executive Session.

10 MR. BLEES: Thank you, Chairman Douglas and  
11 Commissioners. Yes, in addition to the deliberation on  
12 the Calico matter, that the Chairman has already  
13 indicated to request a closed session to discuss Item  
14 4(b) and also to discuss potential exposure to litigation  
15 on another matter. And I would suggest we combine the  
16 consideration of all three of those items.

17 CHAIRMAN DOUGLAS: Thank you, Mr. Blees. And  
18 finally, before we do that, Mr. Kramer, are you intending  
19 to produce a draft of the Errata with some of the  
20 revisions we discussed by a time certain today? Or this  
21 afternoon?

22 HEARING OFFICER KRAMER: Well, no, I'm going to  
23 be otherwise occupied, so -

24 CHAIRMAN DOUGLAS: So, when -

25 HEARING OFFICER KRAMER: Well, if we describe

1    them, I think we can just incorporate them into the  
2    Final Decision.  Because once the Commission decides, my  
3    office takes all those changes and produces a new version  
4    of the Decision that incorporates them.

5               CHAIRMAN DOUGLAS:  All right, so I guess what I  
6    would ask you to do is to have a clear list and we'll go  
7    over it, too, but parties have had at least a summary of  
8    what those items would be.

9               HEARING OFFICER KRAMER:  Right, and they are  
10   all by reference to comments that were filed earlier and  
11   the parties - and could be discussed and, again, to a  
12   degree on Tuesday.

13              CHAIRMAN DOUGLAS:  All right.

14              COMMISSIONER EGGERT:  I think I would maybe  
15   just add, I think, though, in terms of in the interest of  
16   clarity, it's probably worth at least specifically  
17   calling out those areas that are matched with - so in  
18   other words, on the staff's comments, we've modified, as  
19   you said, the soil and water, but we're incorporating by  
20   reference some of the others.  I think, just having that  
21   very clearly laid out would be helpful.

22              HEARING OFFICER KRAMER:  Okay, I'll see if I  
23   can do a quick - maybe a list.

24              CHAIRMAN DOUGLAS:  That would be really  
25   helpful.  All right, so it's about twenty to one, let's

1 start Executive Session at 1:10 in my office, and we'll  
2 plan on recessing the Business Meeting until 2:15 - 2:30.  
3 So we'll see all of you - many of you - back at 2:30.  
4 And we'll go now to Executive Session.

5 (Off the record at 12:43 p.m.)

6 (Back on the record at 2:47 p.m.)

7 CHAIRMAN DOUGLAS: Welcome back, everybody. I  
8 think before we begin, we're going to hear from a member  
9 of the public or -

10 MS. JENNINGS: Yeah, Mr. Jackson, if he is  
11 available on the line.

12 CHAIRMAN DOUGLAS: Mr. Jackson, are you  
13 available?

14 MS. JENNINGS: He wasn't sure he'd be able to.

15 CHAIRMAN DOUGLAS: Well, if he contacts you,  
16 let us know?

17 MS. JENNINGS: Yes.

18 CHAIRMAN DOUGLAS: Wayne Weierbach, Newberry  
19 Community Services District, are you on?

20 HEARING OFFICER KRAMER: He spoke.

21 CHAIRMAN DOUGLAS: Oh, he spoke. I'm sorry.  
22 Is there anybody on the phone who is an Intervener who  
23 has not had an opportunity to speak today? All right,  
24 we'll start by, Mr. Weierbach, you'll have an opportunity  
25 to speak to the Errata in a moment. I think the best way

1 to start is to have Mr. Kramer, if you are prepared, to  
2 read through the list of changes to the Errata so that  
3 everybody hears this list again before they comment on  
4 the Errata.

5 HEARING OFFICER KRAMER: Okay, these will be in  
6 addition to what is in the Errata. I consider all of  
7 these to be - unless somebody corrects me later - and  
8 that's the purpose of this exercise, to be pretty much  
9 just typos and minor changes that nobody had real issue  
10 with. Let's begin with the Applicant's original  
11 comments. These are the ones that were served before the  
12 Committee conference on October 27<sup>th</sup>. So, they've  
13 numbered their suggestions, so number 5, which relates to  
14 the project description, that was just suggesting - or  
15 just clarifying that the control building was going to be  
16 in the substation, if not adjacent to it, that's a minor  
17 factual clarification. Number 8, air quality, was giving  
18 some of the California Commission standard data. Number  
19 9 was eliminating the typo where ozone appeared in there  
20 for some reason and said that it should not. Number 10,  
21 Public Health, updates some of the Commission estimates  
22 for the diesel fueled engines that would be used probably  
23 - perhaps during construction and also perhaps during  
24 operation. Number 12 was in biology, we're skipping - at  
25 our meeting, we had to skip number 11, our staff argued

1 that they were skipping that, and we agreed - number 12  
2 in biology is discussing the noise levels. Number 13 is  
3 asking that monitoring of the Tortoise fences be on, or  
4 fences, in general, be on a weekly, rather than a daily  
5 basis - actually, that is the Desert Tortoise fences.  
6 Number 14 in soil and water, postpones the design of the  
7 sanitary waste septic system until Phase I be - the  
8 argument is that they're not going to be trying to use  
9 that system any sooner, so there's no reason to advance  
10 the design. And to be clear, again, these are all  
11 changes that the community is recommending to be made,  
12 unless somebody objects and convinces - by now it will be  
13 the full Commission - to do something to the contrary.  
14 Number 16 was withdrawn by the Applicant. Number 17,  
15 cultural resources, just a clarification about the fact  
16 that there might be other protective rules for human  
17 remains that are found, and it refers to those. Number  
18 18 in land use discusses the - the required lands and it  
19 has some data about where they are. And number 19  
20 recommends deletion of two - or rather one - paragraph,  
21 and this is actually appropriate because of the new  
22 information. The paragraph that would be deleted was  
23 tentatively concluding that there would be a LORS  
24 violation. And with the new information, now the  
25 Committee is concluding that the use of the LWCF and

1 required lands, the donated and acquired lands, is  
2 consistent with the Federal policy, based on the new  
3 information we received. So number 20 under land use  
4 basically rewrites a paragraph that is thought to be  
5 somewhat confusing, that concludes against the staff's  
6 recommendation that there is a significant cumulative  
7 impact due to the loss of agricultural and range lands,  
8 so the Committee did not accept staff's proposed  
9 conclusion that there wasn't a significant cumulative  
10 impact. This is basically a rewrite to avoid any  
11 confusion, but that's what we meant. There are a few  
12 places, and I don't know that we'll catch them all on  
13 these, but we will be vocally looking to make sure that  
14 we've updated in all the proper places the acreage, which  
15 should be 4,613 acres, that is number 21 under land use,  
16 there's one example of that. Number 22, we are not  
17 adopting, because that is suggesting that it's not  
18 necessary for the Commission to test to see whether that  
19 Federal policy about fire lines has been satisfied. And  
20 while we don't enforce the policy because we do a LORS  
21 examination of State, local and Federal rules, I think we  
22 asked the question, so we're not adopting that one.  
23 Number 23 in land use is more description of - oh, here  
24 we are, Land and Water Conservation Fund, that's the  
25 acronym, and it's more description of the donated lands

1 and the LWCF lands relating to this project, just - I  
2 have the same order of information. And then, number 24  
3 is the socioeconomic section, and that's updating the  
4 data for the construction employee estimates, basically  
5 just saying that, even though the output of the project  
6 is going down, the number of employees is going to remain  
7 the same as was previously predicted. Number 25 is  
8 visual and staff the other day said they were okay with  
9 that. This is reducing the setback from Item 4 a little  
10 bit - increasing? I'll let the Applicant explain that.

11 MS. FOLEY-GANNON: Vision, it was articulated  
12 in the PMPD, required in addition from the setback from  
13 Item 4, you would just do 223 feet, also a setback from  
14 the pipeline, and because this is a condition, there is  
15 an underground pipeline which runs through this other  
16 portion of the site, and so this is just for moving that  
17 requirement and consistent with the analysis taking 223  
18 feet setback from the highway.

19 HEARING OFFICER KRAMER: Okay, so it was  
20 removing the setback on the setback. Okay, 26 is in the  
21 overrides section, and it's just updating the megawatt  
22 estimate for the project. Twenty-seven in overrides is  
23 providing some additional information about the economic  
24 benefits that would come if the project were to do taxes  
25 and other expenditures. And then, finally, 28 is the

1 exhibit list and that will be updated both to indicate  
2 the dates when the various documents were accepted or  
3 admitted into evidence, and adding one or two final  
4 documents to add to the list that were either in the last  
5 Evidentiary Hearing, or at the subsequent meetings. So,  
6 on the staff side, up until about page - if you're  
7 following along - page 25 of the staff comments, those  
8 were incorporated or were not incorporated as  
9 appropriate. There were a couple in there that were just  
10 gratuitous rewrites of the change in the meaning and we  
11 decided we would not bother with that. Barbara Boxer, I  
12 guess, motivated that. But the first comment that is not  
13 yet in the Errata is the staff numbers - not with  
14 paragraph numbers, but with the topic and page number in  
15 the topics section, so, for instance, the first is Soil  
16 and Water, Page 33, and that is clarifying the status of  
17 some of the stormwater flows on the site, that they're  
18 considered waters of the State by the Mojave Regional  
19 Water Quality Control Board and subject to regulation,  
20 just a factual bit of information for us. Soil and  
21 Water, Page 34, there are two of those, the first is just  
22 clarifying that the water flows come from discharge into  
23 the Bios, the next, Page 34, is making a minor change to  
24 Condition of Soil and Water 7. Soil and Water, Page 37,  
25 makes some minor changes to the narrative there.

1 Actually, I'm sorry, the previous one was not making a  
2 change to the condition, it was making a change to a  
3 description of what the Commission achieved. Soil and  
4 Water, Page 44, is an amendment to the Soil and Water 7  
5 and, since this was published, the parties have produced  
6 a whole new separate, that ignores this proposal, and go  
7 with what is published in the Errata. Then, we go to  
8 Coastal Resources, Page 45 through 46, some more  
9 historical information clarifying that the status of this  
10 Route 66 in the Mojave trails national monument, just a  
11 bit of factual detail. Cultural, Page 81 is amendments  
12 to a condition called Cultural 6, it appears to be mostly  
13 about the form of providing information and the timing of  
14 some activities and these are largely research  
15 activities. Land Use, page 2, is adding back an  
16 inadvertently deleted description of the threshold of  
17 significance for cumulative impacts from the land use  
18 discussion. Land Use, Page 4, clarifies that the water  
19 pipeline and the well - it doesn't mention the well, but  
20 that's part of it - are actually on private land that is  
21 subject to the jurisdiction of San Bernardino County, and  
22 then all the other property that is part of the project  
23 is subject to the BLM - BLM lands. The second Land Use,  
24 Page 4, again is clarifying the status of the LWCF lands.  
25 The third Land Use, Page 4, describes the phases in terms

1 of Phase I from 1,876 acre phase, and Phase II, the  
2 2,737 acres, and also there was some - I guess it's a  
3 transposition that I must have started on early, there  
4 are also a lot of cases in the Decision potentially  
5 where, instead of saying that there will be 26,540  
6 Stirling energy units, the number 26,450, a quick  
7 transposition slipped in, so we will replace those in  
8 this particular case and make a global search to make  
9 sure we catch all that. Land Use, Page 5, again corrects  
10 the acreage. Land Use, Page 6, does the same thing, as  
11 does Land Use, Page 11, Land Use, Page 12, it is again  
12 clarifying the status of the pipeline, that it is on  
13 County jurisdiction land, not BLM land, and draws the  
14 conclusion that the project would be consistent with the  
15 - I believe it would be the zoning ordinance in this  
16 context of the various agencies. The second Land Use,  
17 12, is again describing the donated and acquired lands  
18 issue, and that the BLM is, by virtue of their approving  
19 the project, is indicating that the policy that we were  
20 concerned about has been satisfied. Transportation, Page  
21 3, and there are a few here, are adding the name of a  
22 product that is used to seal the roads, I believe, it is  
23 called "SOLitrack." [Inaudible] And then that same  
24 product is mentioned in both Change Transfers, the first  
25 transportation on page 11, and the second transportation

1 on page 11 changes the deadline from 60 to 30 calendar  
2 days. So, in the Socioeconomics, there are changes at  
3 pages 1, 3 and 4, that - let's see, page 1 clarifies the  
4 construction period is going to be 41 months, it was  
5 listed there as 44, that is a problem I noticed in trying  
6 to write this, there were a couple different estimates in  
7 various places, including the Staff Analysis and, I  
8 believe, some of the Applicant's, but they apparently  
9 settled on 41 months, so that is - and then page 3 is  
10 correcting a spelling error, page 4 is, again, the time  
11 of the construction period is 41 months - almost done -  
12 Noise and Vibration, 9-10, they are eliminating the  
13 ability to have noisy construction outside the 7:00 a.m.  
14 to 7:00 p.m. timeframe.

15 MS. FOLEY-GANNON: As staff had commented, it's  
16 actually just putting an alternative need for - that the  
17 CPM could confirm when construction would be allowed  
18 outside at those hours.

19 HEARING OFFICER KRAMER: Okay. Noise 6  
20 eliminates a provision that was recommended for deletion  
21 earlier, somehow it just didn't get deleted, and appears  
22 to authorize the San Bernardino County Government to  
23 issue a variance for construction and, of course, the  
24 Commission is in charge of those matters. And then we  
25 have one final condition that I believe is consistent

1 with what CURE had proposed in their comments, a change  
2 to the Golden Eagle habitat, the conversation habitat  
3 specification evaluation, and I'm told that the  
4 recommendation is that we adopt a version of the language  
5 that is contained in the October 25<sup>th</sup> additional comments  
6 that were filed by the Applicant, so that's to Condition  
7 Bio 20, okay, Bio 20, and it is contained at the bottom  
8 of page 12 of the Applicant's comments. Basically, the  
9 change is to - first of all, they're correcting acreage,  
10 and then to specify that, if habitat - okay, this is  
11 about allowing Desert Tortoise habitat to also qualify as  
12 Golden Eagle Habitat, in other words, don't credit for  
13 the habitat, so this paragraph is specifying when that  
14 would be appropriate and one of the changes is to make it  
15 clear that there has to be foraging habitat, but it also  
16 has to be within a home range of a Golden Eagle, so that  
17 if you put it somewhere where you know it is not expected  
18 to use it, that's not going to get you qualified. And  
19 those are the changes that, due to the press of time, I  
20 could not fully incorporate into the Errata, but the  
21 Committee has recommended that those be adopted.

22 CHAIRMAN DOUGLAS: Thank you, Mr. Kramer. I  
23 would like to ask now Applicant, then staff, and then  
24 Interveners, to raise any issues particular to the  
25 Errata, changes to the Errata.

1 MS. FOLEY-GANNON: Thank you. Our main  
2 concern with the Errata is related to the timing in the  
3 Soil and Water conditions, and we did take the  
4 opportunity of the break to go through it and to try to  
5 determine how we think it could work. We think that the  
6 Committee did make some changes which were helpful, but  
7 you're still seeing that this is a minimum of three  
8 months because, in Soils and Water 12 and 13, are  
9 predicates that both have 30 days, and actually down to  
10 four weeks to submit the DS&T under 1, which also has to  
11 have 30 days, so that's a minimum of 90 days. And I  
12 would also just like to explain that, in our proposed  
13 revision, we are still requiring the same plans for Phase  
14 IA, the difference is that, as has been discussed this  
15 morning, of setting up the sequential approach of having  
16 to have one thing submitted to the CPM, as well as BNSF,  
17 and possibly other parties will review before you can go  
18 to the next step. The Applicant has been working very  
19 hard in anticipation and hope that this will come about  
20 today to get things done and teed up, and into staff, and  
21 being reviewed by the CPM, responding to those comments,  
22 so that as soon as approval from this Board, we would be  
23 able to move forward. The Pre-Construction Department -  
24 most all of these reports have been submitted to CPM,  
25 they haven't been submitted to other parties because that

1 wasn't part of it before, so a number of these, again,  
2 there was a Draft DESCP, which is what is required, Soils  
3 and Water I, which has already been submitted to staff,  
4 and comments will be given back, and that's being  
5 reworked. So, you know, we recognize and we don't object  
6 to having other parties involved in the later planning  
7 for IB and 2, but in order to allow the project to move  
8 forward, that's our main concern.

9 CHAIRMAN DOUGLAS: Okay, so that is the only  
10 issue you are raising with the Errata?

11 MS. FOLEY-GANNON: That is correct.

12 CHAIRMAN DOUGLAS: All right, staff?

13 COMMISSIONER EGGERT: I want to ask a follow-  
14 on. So, this is a question for the Applicant. So,  
15 given, again, the timing concerns, does the proposal that  
16 you have provided for the Phase IA suggest revisions, or,  
17 I guess they would be additions, to soil and water  
18 conditions that provide for basically something to be  
19 done for the purposes of that phase? Does that address  
20 that concern?

21 MS. FOLEY-GANNON: Yes. In the work that is  
22 already being done by the Applicant and that's been  
23 submitted to staff for comments. We could meet the  
24 requirements of what was in the PMPD and these proposed  
25 Phase I requirements for the project and be able to move

1 forward this year. We anticipate that we could if that  
2 would allow us to do that. And one further point that I  
3 would like to raise is that, in the earlier conditions,  
4 in the early iterations of the project, it was never  
5 anticipated that the detention basins would be put in  
6 until Phase IB. So, even when it was a larger project,  
7 if there was anticipating installing detention basins,  
8 that was never going to be part of Phase IA, so we don't  
9 think this really is a substantive change and, again, we  
10 would just ask that you consider along that timing.

11 CHAIRMAN DOUGLAS: Thank you. Staff?

12 MS. HOLMES: Are you looking for comments on  
13 the Errata? Is that -

14 CHAIRMAN DOUGLAS: Yes.

15 MS. HOLMES: Okay. We did not go through them  
16 line by line, we didn't have enough time, we also didn't  
17 go through the verifications. It looks to me as though  
18 most of the recommendations that staff had made, some in  
19 conjunction with the Applicant, some in conjunction with  
20 BNSF, were made in the Errata. I have to say that we  
21 don't fully understand the implication of the timing  
22 changes. There were some instances where there were  
23 changes to timing, and I believe there were at least one  
24 or two instances where a timing submittal was moved from  
25 the verifications to the conditions, and I don't think

1 this is necessarily a problem, but we are a little bit  
2 confused, given how all the timing is going to work. We  
3 had some thought amongst ourselves, both with the  
4 Applicant and the BNSF in trying to come up with a  
5 timeline so we could understand exactly when documents  
6 get submitted relative to one another, but we have not  
7 had time to complete that process. So, I think, in  
8 large, we're quite comfortable with the changes to the  
9 PMPD that weren't included in the Errata. Oh, Mr. Meyer,  
10 who will be the Compliance Project Manager, has pointed  
11 out, of particularly importance to him, which I had  
12 forgotten about, in Soil and Water 3, there is a  
13 reference toward the end of the Conditions of providing  
14 documentation to the CEC and that does need to be changed  
15 to the CPM. Minor point for me, but I think it's  
16 important for the people working on Compliance.

17 CHAIRMAN DOUGLAS: Could you please turn your  
18 mic off - for the moment?

19 MS. HOLMES: I'd be happy to turn it off for a  
20 long time.

21 HEARING OFFICER KRAMER: Okay, that reminds me  
22 of one more clarification. I think it's Soil and Water  
23 2, right at the beginning of the Condition that refers to  
24 a bunch of appendices that were a part of - anyway, it  
25 referred to, I think, three or four appendices and,

1    rather than try and put those into the Decision,  
2    hopefully we will do -- unless a party objects - and it  
3    might be Mr. Meyer, he might be the person most  
4    inconvenienced -- which is simply refer to him by  
5    reference to the staff assessment, because that is where  
6    they reside, by Exhibit number, and then people can go  
7    look it up that way, but we will be adding just a few  
8    words to make sure that they're incorporated, at least by  
9    reference. Now, if somebody wants to argue strongly that  
10   we should print them in the Decision, we can, but it's  
11   probably 50 or 60 pages.

12               COMMISSIONER EGGERT: So, just to clarify, Mr.  
13   Kramer, this is in the Verification for Soil and Water 2,  
14   "upgrading no later than 60 days prior to wastewater or  
15   stormwater discharge [inaudible], the BNSF and the CPM  
16   and copies to LRWQCD, demonstrating [inaudible]. " Is  
17   that -

18               HEARING OFFICER KRAMER: Yes, except they're  
19   first mentioned in the first - well, second line of the  
20   main part of Soil and Water 2, so I think I'll put it  
21   there.

22               MR. MEYER: Speaking as Compliance - potential  
23   future Compliance Project Manager - I have no problem  
24   with that.

25               CHAIRMAN DOUGLAS: Thank you, Mr. Meyer. Let

1 me just clarify, does staff have additional comments on  
2 Applicant's Phasing request? Or was your articulation of  
3 some confusion not being put out of context?

4 MS. HOLMES: We have not finished mapping out  
5 the dates on which all of the different documents,  
6 reports, and studies would be filed, which we had hoped  
7 to do. My comments did not go to the Applicant's phasing  
8 proposal, but to the fact that the Errata that Mr. Kramer  
9 passed out this morning contained additional timing  
10 changes. So, to the extent that we thought we were  
11 getting going on having a road map, if you will, we're  
12 going to have to go back and take a second look at that.  
13 As I said, I don't anticipate a problem, I'm just  
14 pointing out that we're still not certain exactly what  
15 the roadmap looks like in terms of the findings. I would  
16 imagine that the Applicant may actually have a better  
17 idea at this point than we do.

18 COMMISSIONER EGGERT: Actually, if I just might  
19 follow-up on that, but I think the question was, has your  
20 opinion changed about the proposal from the Applicant on  
21 Phase IA?

22 MS. HOLMES: No. We don't anticipate a problem  
23 from the staff's perspective in addressing a phased  
24 proposal for purposes of soil and water - compliance with  
25 the soil and water conditions.

1 MS. FOLEY-GANNON: And just to clarify, we did  
2 look through this line by line over lunch and, again,  
3 with the phasing, these are timeframes that we believe we  
4 can accommodate, we can work with.

5 CHAIRMAN DOUGLAS: Thank you, so any additional  
6 comments? Are there any other parties who would like to  
7 speak about the Errata, any issues, concerns, questions  
8 about the Errata? Please.

9 MS. BURCH: We were not able to - this is BNSF,  
10 Cynthia Burch - we were not able to completely go through  
11 the Errata, but there are a few things that we do think  
12 need to be corrected, for sure. On the first amendment  
13 performance standard on Soil and Water 8, which is on  
14 page 34 of the Errata, there is a designation of what the  
15 existing - how we'll understand what the existing  
16 condition baseline is, if you will. And that is the  
17 wrong document, so - it's the wrong document, and we have  
18 not had an opportunity to verify any document and,  
19 because this is so important to determine what is a  
20 changing conditions, we think it's very important that we  
21 get that right. So, we drafted language that says  
22 "project construction and operations shall not alter  
23 either the existing watershed or sub-watershed boundaries  
24 below the very structures within the BNSF right of way.  
25 The existing watershed and sub-watershed boundaries shall

1 be depicted on a map which shall be provided to BNSF for  
2 its approval before it is submitted to the CPM for final  
3 approval." I can't think of anything better to do than  
4 where we are.

5 COMMISSIONER EGGERT: Does that replace 1A?

6 MS. BURCH: It will replace IA. And I could  
7 provide that in writing to Mr. Kramer. Would you like me  
8 to re-read it or - the concept is clear.

9 HEARING OFFICER KRAMER: Mostly deletions.

10 MS. BURCH: Yes, exactly, and provides for  
11 something to be developed that is accurate. We would  
12 specifically like to ask that the scour analysis and  
13 whole foundation reports which are provided for in Soil  
14 and Water 3 be moved up so that they're completed and  
15 approved prior to the approval of the DESCT because we  
16 believe the information of the reports is needed to reach  
17 a conclusion on DESCP. The current recess 30 days prior  
18 to construction, which would be too great for its  
19 inclusion.

20 CHAIRMAN DOUGLAS: Let me just ask if staff,  
21 Mr. Kramer, or Applicant have any response to that  
22 request.

23 MS. FOLEY-GANNON: The first request, we would  
24 suggest review and comment, rather than review an  
25 approval by BNSF, but otherwise we don't have any

1 objection. The second request, having the full  
2 foundation report done prior, we don't have an objection  
3 to.

4 HEARING OFFICER KRAMER: How best to make that  
5 change? Is it Timing Requirement and Verification? So,  
6 it would be 30 days prior to -

7 MS. BURCH: I'm sorry?

8 COMMISSIONER EGGERT: So, the question is what  
9 are you requesting, that it be linked to - you had said  
10 that 30 days prior to construction was too far away to -

11 MS. BURCH: Oh, the Scour Analysis?

12 COMMISSIONER EGGERT: Yeah.

13 MS. BURCH: How about that it be submitted for  
14 approval 60 days prior to finalization of the DESCP?  
15 That would allow [inaudible] [37:20].

16 MS. FOLEY-GANNON: We do not object to 30 days,  
17 but we do object to 60 days.

18 COMMISSIONER EGGERT: How about [inaudible]?

19 MS. FOLEY-GANNON: We can accept that.

20 CHAIRMAN DOUGLAS: Staff, any comment on that?

21 MS. HOLMES: The only comment I would make is  
22 that we agree it should be review and comments and  
23 approval by BNSF. The timing issue, again, if it is not  
24 a problem for the Applicant, I don't think that we have a  
25 problem. I would point out that we do have a draft of

1 the DESCP, so to the extent that this is opposing  
2 requirements that documents be submitted, I don't know  
3 quite exactly - prior to the DESCP, I don't know exactly  
4 how this is going to work out in practice. That's just  
5 for informational purposes, we already have a number of  
6 the draft plans for this.

7 MS. FOLEY-GANNON: And, again, that is why we  
8 are requesting for Phase IA to not be subject to these  
9 requirements, that would address that issue, and we  
10 recognize there may be some redundancy, but, again, we're  
11 willing to accept that to address their concerns.

12 COMMISSIONER EGGERT: As I understand, part of  
13 BNSF's interest here is that - you have received a DESCP?

14 MS. BURCH: We have received no documents, not  
15 the topographic survey, the geotechnical report, there is  
16 no infiltration report yet, there has been no hydrology  
17 report/study approved. These are all items that we are  
18 suggesting and we think there is good engineering and  
19 scientific basis for these to be done sequentially,  
20 approved sequentially, there are answers and assumptions  
21 and conclusions integrated into the next document, and  
22 then you keep moving forward. And we're very concerned  
23 to hear that a DESCP is under review by staff with these  
24 prior steps having not been reviewed, as those who  
25 attended the evidentiary hearings will know that we found

1 numerous errors in every piece of information we were  
2 given.

3 CHAIRMAN DOUGLAS: If there is no other  
4 discussion on this item, do you have other discussions?

5 MS. BURCH: I do have - again, I apologize, I  
6 just couldn't get through all of this, but those are the  
7 major - and soil and water. I do have an objection to  
8 one of the requests for an Errata that is being proposed,  
9 and that is that the evidentiary record closed on this  
10 matter repeatedly, but it really was supposed to have  
11 closed, I believe it was last Monday, and the only item  
12 that was reopened for evidence at that time was with  
13 respect to a BLM decision and we did not object to that,  
14 we understood the importance of that decision, but we saw  
15 that, in the comments submitted by Applicant, they  
16 proposed to - at the requirement of the Commission - to  
17 provide an update on information that was then not  
18 subjected to any ability to cross examine, and I think it  
19 is critical information that goes to the validity of the  
20 overriding considerations, and so we should have been  
21 given an opportunity for at least cross examination to  
22 get to the basis of their claims with regard to how many  
23 jobs and how much money and how much taxes, and there's  
24 been no opportunity to look at that information. I  
25 believe it is Errata 24, Mr. Kramer? I'm not even sure,

1 it's either 24 or 27, but it's information that goes to  
2 overriding considerations.

3 HEARING OFFICER KRAMER: Let me ask the  
4 Applicant, I believe that it's not new information to the  
5 record, but it's new information that is being clarified  
6 in the Decision. I was reminded that Felicia's testimony  
7 for the 5-15 contained all of that in there. The first  
8 time I looked, I couldn't find it, but it was - so it is  
9 not new at this point.

10 MS. BURCH: So, then, I'm confused. Why were  
11 they updated? Why is it called "updated information?"

12 HEARING OFFICER KRAMER: Well, maybe that's  
13 just imprecision on my part, but it's one thing to have  
14 it in a piece of evidence and it's another thing to do  
15 that in the written Decision, and that's what this  
16 process is, it's an update of that Decision to be  
17 precise. But let's have the Applicant confirmed that.

18 MS. FOLEY-GANNON: There was testimony that was  
19 offered on 5.5, I don't have the date, that was the  
20 testimony that was after the project Response to the  
21 September 3<sup>rd</sup> Order, in which the consideration of the  
22 project came out, is actually in testimony that was  
23 provided by Datwell [ph.] who is an expert in the  
24 socioeconomic issues and he made the predictions and the  
25 calculations about this, and this was providing further

1 description of it, as you said, that the numbers were  
2 actually in his testimony. The testimony that was  
3 submitted was all attachments in Ms. Bellows' testimony,  
4 but it was actually his conclusions that were presented.

5 CHAIRMAN DOUGLAS: All right, anything else?

6 MS. BURCH: No, thank you.

7 CHAIRMAN DOUGLAS: Thank you. Other parties who  
8 would like to comment on the Errata, raise questions?  
9 Are there any parties on the phone who want to ask  
10 questions or make comments on the Errata? All right,  
11 seeing no takers to that offer, if there are questions or  
12 discussion?

13 MS. KALLEMEYN: Chairman Douglas?

14 CHAIRMAN DOUGLAS: Yes.

15 MS. KALLEMEYN: I was under the impression that  
16 the callers' lines are open so that they could comment.

17 CHAIRMAN DOUGLAS: Is the line open now? All  
18 right, I am sorry, is there anybody on the phone who  
19 would like to comment about the Errata? Is there anyone  
20 on the phone who didn't have an opportunity to comment on  
21 the project this morning and who is on the phone this  
22 afternoon who would like to comment on the project? All  
23 right, thank you. All right, Commissioners.

24 COMMISSIONER EGGERT: So, I think - I'm not  
25 exactly sure what the proper sequence is here to propose

1 this, but I think there is an opportunity to consider,  
2 at least for the purposes of our decision, the ability of  
3 phasing a project, there is a suggestion that we replace  
4 the Applicant's first soil and water condition to be  
5 consistent with the performance criteria that have been  
6 agreed to by the various parties, including at least what  
7 we believe to be agreement by the various parties, but I  
8 do have a handout that describes that, if this is the  
9 proper time to do that. This basically closes, perhaps,  
10 one of the remaining stray items that will allow for that  
11 to be properly considered. And I'm willing to share  
12 that. This is actually prepared by our able counsel. It  
13 is coming around, so you'll have it in front of you.

14 MS. DRISCOLL: This is Kristin Driscoll  
15 from the Chief Counsel's Office. I'll just give a brief  
16 description of the change, as opposed to reading it.  
17 Applicant proposed a soil and water [quote] "XX", which  
18 is supposed to be a number at some point, this would  
19 allow the Drainage, Erosion and Sedimentation Control  
20 Plan to proceed for Phase IA only. I recommended a  
21 change that includes the performance standards from Soil  
22 and Water 1 and incorporating them into the Soil and  
23 Water XX, as it is called right now. These performance  
24 standards ensure that the BNSF Railway is protected from  
25 sedimentation and storm water increase in runoff, and it

1 ensures that water quality and soil resources of the  
2 project site, as well as linear features for the project  
3 site are protected from drainage, erosion, and sediment.

4 HEARING OFFICER KRAMER: That replaces the  
5 first eight and a half lines of subparagraph (a),  
6 correct? So it's all on page 1 of the Applicant's  
7 suggested revisions to Surface Soil and Water Conditions.  
8 And if we could give that a number, it would be - 16,  
9 Soil and Water 16.

10 MS. FOLEY-GANNON: The Applicant has no  
11 objection to that. We would support that change.

12 CHAIRMAN DOUGLAS: Staff?

13 MS. HOLMES: I'm trying to understand how it's  
14 different from, once again - is the only difference  
15 between this and what the Applicant submitted the  
16 inclusion of the linear features and the specific  
17 reference to other structures of adjacent properties?

18 MS. DRISCOLL: It just makes it the same as  
19 Soil and Water 1, basically, there's no other difference.

20 MS. HOLMES: Thank you.

21 CHAIRMAN DOUGLAS: All right, if there are no  
22 more suggestions or comments on the Errata,  
23 Commissioners, comments on the overall project. There  
24 are a lot of people who stayed with us through the  
25 morning and afternoon.

1                   VICE CHAIR BOYD: Well, first, I want to thank  
2 counsel for reflecting something we talked about with  
3 regard to conforming the performance standards that we  
4 just finished discussing, I certainly agree with that.  
5 Secondly, I want to concur in Ms. Holmes' comments about  
6 not subjecting submissions to BNSF to approval, but  
7 rather, comment. Even before she commented, I said to  
8 myself in my mind when I heard that, we don't delegate  
9 our responsibilities for approval of this, so I think  
10 that is appropriate. And I guess, in sum, I would say  
11 that I will confess to having quite a few concerns and  
12 issues in my mind when I came to this hearing today,  
13 heavily reliant upon the Committee, though, in terms of  
14 the incredible hours and effort they put into this  
15 subject, and having set a precedent that I hope is never  
16 repeated again here at the Commission in terms of the wee  
17 hours of the morning, which you were willing to meet,  
18 certainly it will never be followed by this Commissioner.  
19 I would fall asleep on you all before - in any event, I  
20 did have a lot of concerns, answers to those concerns  
21 have been, in my mind, elicited through the  
22 clarifications and discussions that have taken place  
23 since we started this morning. I will confess to still  
24 being concerned about a lot of issues, but I am primarily  
25 persuaded by the benefit of this project to California as

1 a whole, to Californians, to their health, to the  
2 climate, to even criteria air pollutants, outweighing any  
3 of the concern that I had in my mind about some of the  
4 other impacts. And some people in this room know I spent  
5 time in Fish and Game and a lot of years at the Air  
6 Resources Agency, and I have a lot of concerns for our  
7 environment. But I do think, in the aggregate, I'm  
8 prepared to support the approval of the project as it has  
9 been discussed and modified throughout the course of this  
10 discussion. But I will say that this approval, on my  
11 part, is predicated upon a fair understanding of the  
12 performance standards and looking at the project manager  
13 who will become the manager of said performance. There's  
14 a lot of teeth in this and we intend that those  
15 performance standards be adhered to because there is  
16 criteria around these performance standards that speak  
17 very strongly to the Applicant about what the status of  
18 their project will be or won't be if they don't adhere to  
19 and meet the criteria and the timelines that are there.  
20 And I think, with those safeguards, I am comfortable  
21 enough to join the members of the Committee who are  
22 recommending this project in supporting the project  
23 today.

24 CHAIRMAN DOUGLAS: Thank you, Commissioner  
25 Boyd. Other points?

1                   COMMISSIONER EGGERT: So, let's see, I think  
2 I'd like to make a number of comments prior to a vote,  
3 and then, if you'll allow me, maybe a few afterwards.  
4 Just to kind of go through, I think we've talked at the  
5 beginning of this about the history of this project, but  
6 I want to call out a number of, I think, significant  
7 items just for everybody to be aware of. This was a  
8 Application for Certification that was submitted in  
9 December of 2008, it was deemed data adequate in May of  
10 2009. There has been a lot of discussions about the  
11 significant number of evidentiary hearings, there was a  
12 pre-hearing conference July 30<sup>th</sup> of 2010, evidentiary  
13 hearings on August 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 18<sup>th</sup>, 25<sup>th</sup> and a final  
14 hearing on September 20<sup>th</sup>, which I will allow should  
15 probably be 20<sup>th</sup> and 21<sup>st</sup>, given that we did go well beyond  
16 the midnight hour. In addition to the evidentiary  
17 hearings, both the Commission and the BLM had held a  
18 number of workshops, joint issues resolution,  
19 alternatives, identification, data response workshops,  
20 the dates are all in the Errata of September 16<sup>th</sup>, April  
21 16<sup>th</sup>, December 22<sup>nd</sup>, August 24<sup>th</sup>, September 9<sup>th</sup>, both here  
22 and in Barstow and, of course, the purpose of all of this  
23 was to provide the Interveners, the members of the  
24 community, government agencies, the opportunity to obtain  
25 information about the project, participate in the

1 process, contribute expert testimony and input to try to  
2 make it a better project. My estimate is that there were  
3 at least 50 hours of evidentiary hearings and many many  
4 more in the form of workshops. Certainly, being rather  
5 new to this Commission, I can honestly say I've never  
6 participated in a more open, inclusive, transparent,  
7 comprehensive and, as some have mentioned, exhaustive  
8 process. As has also been mentioned, the committee did,  
9 on September 3<sup>rd</sup>, direct that the parties explore reduced  
10 size alternatives to the proposal primarily because of  
11 the impacts to the high quality Desert Tortoise habitat  
12 at the northern portion of the project. The effort that  
13 was undertaken by the parties, in particular the staff,  
14 in evaluating the proposals that came from the Applicant,  
15 I think, was nothing short of heroic. The staff was able  
16 to fully analyze and then recommend a hybrid scenario  
17 which is called 5.5, that was eventually adopted by the  
18 Committee in the PMPD. This reduced acreage by any  
19 measure dramatically reduces the impact of the biological  
20 resources using the US Fish and Wildlife Service  
21 formulas, which I understand there is some dispute on  
22 their accuracy, the number of tortoises estimated on the  
23 site went from 189 down to 22. This is a greater than 80  
24 percent reduction in impacts estimated. This acreage  
25 reduction came at a cost, it reduced the project output

1 by about 190 megawatts, which is basically a reduction  
2 in our ability to meet our renewables goals, our  
3 environmental energy goals, but the Committee felt that  
4 cost was justified because of the dramatic reduction in  
5 biological impacts. It also increased the ability for  
6 migration of habitat corridors. But I really think that,  
7 I mean, this to me was sort of what CEQA and the Warren-  
8 Alquist Act is all about, it's basically providing this  
9 open process to receive expert testimony, to allow for  
10 the Committee to take that under consideration, and  
11 participate in making for a better project. Almost done.  
12 In terms of the benefits, again, these have been  
13 mentioned, up to 660 megawatts, which will allow us to  
14 meet our renewables goals. One thing that didn't come up  
15 in our discussion today is an interesting aspect of this  
16 technology is that it doesn't use steam generation to  
17 produce power, so water consumption is one of the lowest  
18 of all of the solar thermal technologies. This one uses  
19 about 36 acre feet per year, which for desert  
20 environments, we all know is a significant issue. We've  
21 talked to the employment numbers. And then I think,  
22 finally, I do want to spend just a second on the other  
23 benefit, which is greenhouse gas emissions. I think, you  
24 know, we've heard about how this project is being rushed  
25 to meet ARRA deadlines, and I think clearly the benefit

1 that the project stands to receive Federal dollars is a  
2 benefit, but, for me personally, I think what's motivated  
3 me to really take on this process is climate change. I  
4 think we know - at least, I feel confident that if we  
5 don't address climate change, if we don't address the  
6 emissions that are associated with fossil fuel  
7 consumption, the opportunity for significant economic  
8 hardship for our local and global economies, sea level  
9 rise, threatened coastal infrastructure, wildfires,  
10 disrupted changes from sedimentation, rising temperatures  
11 exacerbating air pollution, and threatening the same  
12 desert ecosystems that we're all trying to protect, you  
13 know, these aren't really an abstraction of some model,  
14 these are changes that we're seeing today, and if we  
15 don't act urgently and responsibly, we will not meet our  
16 goals, and this is not just an issue for California, this  
17 requires the rest of the country joining us and other  
18 parts of the world, as well, and I think there are a lot  
19 of naysayers out there that will claim - and are claiming  
20 - that renewable generation is too hard, it's too  
21 expensive, it faces too many institutional barriers to be  
22 successful. And I think we have an opportunity today to  
23 show that you can responsibly site renewable energy in  
24 California. I recognize that there are still remaining  
25 impacts and I think - I wish that were not the case. I

1 know we've got a number of activities underway to try to  
2 pick better sites, so that we don't face the challenges  
3 that we faced in this project, and I look forward to  
4 those processes actually delivering. But for all this, I  
5 urge you to vote yes for this project.

6 CHAIRMAN DOUGLAS: Thank you, Commissioner  
7 Eggert. Commissioner Byron.

8 COMMISSIONER BYRON: Thank you, Madam Chair.  
9 Commissioners, this project has - there has been a number  
10 of significant changes in this proposed project over the  
11 last number of months. I believe that those changes have  
12 made the project significantly better, as Commissioner  
13 Eggert has summarized in his comments. And I think the  
14 Applicant should be commended for the responsiveness to  
15 the direction of the Committee. But the project  
16 improvements have certainly not been easy for all the  
17 parties involved and the staff. But I have to say that  
18 your participation has benefited this project  
19 significantly. I believe the Presiding Member has driven  
20 this process towards a much better outcome, sometimes  
21 under a grueling and demanding schedule, and this  
22 project, if built, will make a significant contribution  
23 to moving California towards renewable power, while  
24 minimizing impacts and improving the environment. Now,  
25 the parties, predominantly our Interveners concentrate on

1 various issues of extreme importance to them and to a  
2 number of Californians, and we spend most of our time -  
3 we spent most of our time in hearings and certainly today  
4 listening and evaluating those issues. But there are a  
5 number of beneficial aspects to a renewable project such  
6 as this one that oftentimes are never even mentioned in  
7 the record. Commissioner Eggert mentioned climate  
8 change, some of the economic values, etc. Included in my  
9 evaluation is that this project saves human lives.  
10 Incremental early death due to carbon-based fuel, the  
11 burning of carbon-based fuel in this state is still at  
12 about 9,000 people per year. There are other health  
13 effects, of course, as well. This project displaces  
14 burning carbon fuel, or, I should say, "fossil fuel."  
15 And this makes an a measurable improvement on the impact  
16 on human health, as well as addressing a number of  
17 significant environment, social and economic issues that  
18 we've considered in our evaluation. Reducing the use of  
19 fossil fuels means less drilling, mining, and potential  
20 damage to other ecosystems, reduced injury and loss of  
21 human lives from these industries, and possibly less  
22 likelihood of an occasion catastrophic accident.  
23 California imports almost all of its fossil fuel, some of  
24 it in-country, but most of it from foreign countries.  
25 The sun is an in-state sustainable renewable fuel. And,

1 of course, it can always be argued, and I would agree,  
2 that improvements can be made to all projects. There is  
3 no perfect project, even if it's a renewable project.  
4 However, in addition to considering the environmental  
5 impacts of an application, this Commission is charged  
6 with balancing all the issues associated with electrical  
7 generation, including its associated benefits. For that  
8 reason, this application with its carefully constructed  
9 Conditions of Certification, and the necessary overrides,  
10 I believe, should be approved and I also recommend it to  
11 you for your yes vote.

12 CHAIRMAN DOUGLAS: Thank you, Commissioner  
13 Byron. Commissioner Weisenmiller.

14 COMMISSIONER WEISENMILLER: Yes, I have a few  
15 comments. I think, as Commissioner Byron indicated, I  
16 think, as we have been marching through these projects,  
17 we've been looking for the perfect project, and none of  
18 them are perfect. This one, I don't think anyone  
19 described this one as perfect on our list of projects.  
20 It may well be one of the more marginal ones. But I  
21 think, again, part of what we're doing here is trying to  
22 balance factors. In terms of my thinking, obviously one  
23 of my primary concerns is climate change and, to address  
24 climate change, we really have to reduce fossil fuel use,  
25 reduce greenhouse gas emissions, and renewables are one

1 of the ways to do that. Obviously, in the loading  
2 order, energy efficiency is above that, but we need  
3 renewables. As you look at CARB's plan for reducing  
4 greenhouse gas emissions, you'll get the PUC's LTP, we  
5 need renewables, we need every project we can get, as  
6 long as we can deal with the basic mitigation. But I  
7 think in terms of this very important push for  
8 renewables, along with our climate change, we have to  
9 deal with the reality of the economic recession in  
10 California. We need jobs, we need investment, and this  
11 project will provide 400-700 jobs during construction,  
12 700 is the peak, 400 is the average, it will have 182  
13 operating jobs and, again, this is in San Bernardino  
14 which, I think, now has around a 15 percent unemployment  
15 rate, and that's one of the areas that has been hit very  
16 hard by the collapse of our housing industry. So, I  
17 think in terms of dealing with both our climate challenge  
18 and our economic challenges, this is an important  
19 component. I think, obviously, environmental values are  
20 important to me, I'm on the Commission as a Scientist,  
21 and I think I very much appreciate what the Committee did  
22 in its ruling on the original project. It would have  
23 been very very hard for me to support the original  
24 configuration, so I think that was a very very critical  
25 step. I also appreciate the time and energy that the

1 Committee has put into making this a better project, and  
2 making it an acceptable project. I think Commissioner  
3 Eggert has been remarkable in terms of how much he has  
4 drilled down to this and the level of detail and the sort  
5 of thoroughness of trying to take this process and to  
6 make it acceptable, I mean, certainly well beyond what I  
7 think Applicants should expect from us, you know, and I  
8 guess I am also not volunteering for setting any records  
9 on how these things go. And I certainly appreciate the  
10 Intervener contribution here and, you know, reading the  
11 pleadings, I mean, certainly, among others, the Sierra  
12 Club pleading at the stage, it was very very well  
13 written, it really crystallized issues very clearly. I  
14 think in terms of - I really would also like to indicate  
15 my appreciation to the Applicant to work with the staff  
16 and work with the Interveners to get a better project,  
17 and certainly I've been in litigation where, for some  
18 reason, Applicants draw the line and pretend they don't  
19 have problems, and at the end you have to flush the  
20 project. So, again, I certainly appreciate that  
21 willingness to roll up your sleeves, be here all hours,  
22 day and night, both the Interveners, the Applicant, and  
23 the Committee, to try to get a better project. And I  
24 think it's already been remarked, I think that's one of  
25 the beauties of our functional program process here and

1 the public participation process is that the projects,  
2 as they evolve, although it can sometimes be confusing to  
3 track this evolution, certainly they come out hopefully  
4 better than when they came in. Having said all that, we  
5 are facing extraordinary times now, but I think we do  
6 have to look at the lessons learned this year of our  
7 siting process, we are certainly starting the formal  
8 process, I encourage everyone in this room to participate  
9 in lessons learned, and certainly one of the key lessons  
10 from our perspective is location, location. You know, as  
11 we looked at the spectrum of projects, we've looked at  
12 the projects that have been easier, where the decisions  
13 would be easier, and then ones where the locations had  
14 been very well chosen, and the ones that were more  
15 difficult is where the location turned out to have  
16 problems. I mean, hopefully, moving forward through the  
17 DRECP, we can give the Applicants a much better  
18 opportunity to pick the right sites. But, again,  
19 unfortunately that process is going to take us a couple  
20 years, but it's important we get that right. I think, in  
21 terms of just sort of wrapping up, I think also in terms  
22 of looking forward, I would certainly concur with  
23 Commissioner Boyd, one of the things that makes me  
24 comfortable with the project is that we not only have a  
25 very vigorous compliance program in terms of conditions,

1 but, by God, we're going to have a very vigorous  
2 enforcement program for those conditions, and it's very  
3 clear for this Applicant, or any Applicants, even though  
4 you have a phenomenal rush to try to meet with the  
5 deadlines, if necessary, we will shut down work to make  
6 sure that you're in fact in compliance. It is important  
7 to try to get those programs, but at the end of the day,  
8 the conditions we are very very serious, and certainly as  
9 head of the Siting Policy Committee, as staff will tell  
10 you, it is sort of a bi-weekly exercise to know what is  
11 going on in compliance and are we on top of that. So,  
12 again, certainly wish the Applicant good luck on trying  
13 to deal with the Federal conditions, I still think it  
14 would be a lot easier for you if you could go for the  
15 five percent safe harbor, that from the stand of  
16 construction, who knows? You may end up there, yet.  
17 But, again, I realize this is a starting point for you in  
18 many respects, you're moving forward with the end game  
19 and, again, it wasn't necessarily an easy decision, but I  
20 think, as Commissioner Eggert said, we've gotten to the  
21 right conclusion.

22 CHAIRMAN DOUGLAS: Thank you, Commissioner  
23 Weisenmiller. Briefly, I'll make a few comments, as  
24 well. I've quite closely watched this proceeding and  
25 with some concern, and sometimes, frankly, with a lot of

1 concern, also sometimes with some real pride, and I was  
2 tremendously impressed with the Committee when it made a  
3 very unambiguous statement that the configuration that  
4 was proposed was not a configuration that the Committee  
5 was prepared to recommend to the Commission. And I  
6 suppose some of my pleasure in that was knowing that I  
7 had a Committee that was going to bring me something back  
8 it believed it could approve, the Commission could  
9 approve, based on minimizing the impacts to Desert  
10 Tortoise, Bighorn Sheep, and other species. The  
11 Committee action dramatically reduced those environmental  
12 impacts and it took this project from one in which I  
13 don't think I could ever have brought myself to the "yes"  
14 position on, to one in which I certainly am in support  
15 of. It is clear, I think we've all learned, the  
16 Commission has learned, and I know Applicants have  
17 certainly experienced that some sites are easier than  
18 others to permit, and it's absolutely in the interest of  
19 the State that we encourage Applicants and push  
20 Applicants, and continue pushing to go to the sites with  
21 fewer impacts in the first place, so we don't have to do  
22 as much mitigation, and Mr. Brizzee will be satisfied  
23 that we are out buying less mitigation land because there  
24 are fewer impacts in the first place. That's where we  
25 need to go. I think the next round of projects, not

1 across the board because we had some in the low impact  
2 category, but the next round of projects has to learn  
3 from this round, it has to bring us projects that don't  
4 require Commissioners to spend days and days and days and  
5 evidentiary hearing on impacts that might be avoided with  
6 different project proposals. And, at the same time, I've  
7 got to recognize that the Applicant has been flexible and  
8 did accept the direction of the Committee and worked very  
9 hard when it got the direction of the Committee to put  
10 together a proposal or a project that I think does pass  
11 the test, it does pass the test for me. So, I will also  
12 be in support of this project. I just really wanted to  
13 mark, at least for me, and at least for the Committee,  
14 and Commissioner Weisenmiller, Commissioner Boyd, they  
15 made similar remarks, that somewhere between where Calico  
16 was before the Committee took its action and where it is  
17 now is a line that I definitely looked at and  
18 contemplated, and didn't think I wanted to cross. The  
19 climate imperative, the imperative of the renewable  
20 energy, the imperative to jump start our economy and get  
21 jobs, the fact that this first round of projects is in  
22 some ways a learning experience for all of us, one of my  
23 friends in the environmental community, who I spoke to  
24 some time ago, just implored me, "Think of these almost  
25 as pilot projects. Think of these as the first wave, and

1 learn, and don't necessarily accept what you accept  
2 today, in the future." And I think that, in the lessons  
3 learned process that Commissioner Weisenmiller and I and  
4 the rest of the Commission will be embarking in, these  
5 are concepts that we will very much want to talk about.  
6 But all of us said that the Applicant did a great job,  
7 got the message, and really drilled down the project, the  
8 Committee worked tremendously hard in helping make that  
9 happen. The Interveners had a huge impact on this  
10 project, and so you are not completely satisfied, I know  
11 that from the comments today, but I also know that you  
12 recognize how much this project has changed. So, thank  
13 you for your engagement in this project. That concludes  
14 my comments. I would entertain a motion.

15 COMMISSIONER EGGERT: If I may, Madam Chair,  
16 and you will excuse me because I think this might be a  
17 rather long motion. I want to make sure I get it right.  
18 But I think I can use some shorthand and Mr. Kramer can  
19 help me out. But, I am moving that we approve the Calico  
20 Solar Project with the addition of the Errata that was  
21 provided this morning, and with the additions that Mr.  
22 Kramer read into the record, as well as the proposed  
23 condition from the Applicant for Soil and Water 16, with  
24 the edits that were provided, that align the performance  
25 criteria with Soil and Water 1, and I think that, Mr.

1 Kramer, did I miss anything?

2 HEARING OFFICER KRAMER: The change to  
3 Condition Soil and Water 8, subparagraph (1)(a) that Ms.  
4 Burch read, with the further change that she would not  
5 have read, that participation of the railroad would be to  
6 comment, rather than to -

7 CHAIRMAN DOUGLAS: Approve.

8 HEARING OFFICER KRAMER: -- concur, yes. And  
9 Condition Soil and Water 3, the verification, it is at  
10 least 30 days prior to finalization of the DSCEP, rather  
11 than prior to construction.

12 COMMISSIONER EGGERT: Thank you, Mr. Kramer,  
13 and again, yes, with those additions and particularly  
14 with the clarification that we received from the BNSF,  
15 and the modification for comment, and I think with that,  
16 that is a motion for approval.

17 CHAIRMAN DOUGLAS: Is there a second?

18 COMMISSIONER BYRON: Second.

19 CHAIRMAN DOUGLAS: All in favor?

20 (Ayes.)

21 The project is approved. Thank you. And,  
22 Commissioner Eggert, you wanted to make some comments  
23 after.

24 COMMISSIONER EGGERT: Yeah, if I could. I  
25 realize that some people are anxiously awaiting to go to

1 see a baseball game, so I will be brief. I did want to  
2 take the time to thank a couple of folks. This has been,  
3 as has been mentioned, a very very long process. I think  
4 my significant other would attest that I spent more time  
5 with the parties than going on dates with her over the  
6 last several months, including late nights, which I will  
7 stop on that note. I want to thank my fellow  
8 Commissioner Byron who really, I think, taught me a  
9 tremendous amount about how to run a proper hearing and  
10 participate in the hearing process. I think, without his  
11 guidance and counsel, this would have been much much more  
12 challenging, so I feel like I've learned just a  
13 tremendous amount from him on this project. I want to  
14 thank the advisors that we had for this project, which  
15 would include Lorraine White, certainly, Commissioner  
16 Byron's advisor, Kristie Chu, as well as Laurie ten Hope  
17 provided a lot of extremely valuable advice and input, as  
18 well as Joe Boyer, actually, for a portion of the  
19 project. I want to thank all of the staff, the CEC  
20 staff, as I mentioned, some of their work was incredibly  
21 heroic just in terms of the volume of analysis that they  
22 undertook and the time period that they undertook, and  
23 especially as it related to the Committee's Order, I  
24 think, you know, I can't even express how impressed I was  
25 with the level of analysis that they undertook for the

1 revised project proposal, and really did a top notch  
2 job. I want to thank all the Interveners and, again, got  
3 to know them extremely well - Californian Union for  
4 Reliable Energy, Defenders of Wildlife, Basin and Range  
5 Watch, Sierra Club, Society for Conservation of Bighorn  
6 Sheep, the County of San Bernardino, Patrick Jackson,  
7 Newberry Community Service District, and particularly  
8 BNSF, I think they showed themselves to be quite a  
9 formidable Intervener and, in particular, contributed as  
10 an Intervener that did have a legitimate and strong self-  
11 interest in making sure that their assets were protected,  
12 and especially assets that contribute a significant  
13 amount to the economic vitality of the State and goods  
14 movement corridors within the State, I want to express my  
15 appreciation for their contributions, as well. And, as I  
16 said, the other parties, in particular, as they  
17 contribute the expert testimony, that really did help  
18 guide this project and guide the Committee in their  
19 decisions that ended up in the final project description.  
20 And then, finally, I want to thank the Applicant, I think  
21 as this has been very very challenging, and they stuck  
22 with it, you know, with each challenge and each setback,  
23 they came with proposed solutions and really did their  
24 part in adapting to sort of the ever-changing challenges  
25 that were put before them. So, I think I'll stop there

1 so we can make the first inning, for those who actually  
2 might be going to the game, can avoid some of the  
3 traffic, perhaps. And, again, thank you all very much.

4 CHAIRMAN DOUGLAS: Thank you, Commissioner  
5 Eggert. And thank you for your especially hard work on  
6 this project because it was very impressive to see how  
7 much you got in and how thorough you reviewed all of  
8 these issues.

9 COMMISSIONER EGGERT: And actually, as I looked  
10 up, I realized that I did forget one extremely important  
11 - and I apologize - the Legal Office and, in particular,  
12 Ms. [inaudible] and Ms. Driscoll, and Mr. Blee provided  
13 a lot of excellent counsel, as well, especially towards  
14 the end of the project. Oh, and extremely important, is  
15 a person who has gotten the least amount of sleep  
16 throughout this process, Mr. Kramer, who has done an  
17 incredibly good job being the Hearing Officer and guiding  
18 this whole process along. I mean, it really is Mr.  
19 Kramer's show once we do the niceties of the  
20 introductions, that he takes over and we get to work and  
21 actually get things done, so I appreciate all that.

22 HEARING OFFICER KRAMER: I'm going to give you  
23 back to your significant other's approval.

24 COMMISSIONER BYRON: Madam Chair, if I may,  
25 just one sentence, our new Commission certainly has

1 demonstrated new standards of performance, some of which  
2 no one else will ever be able to duplicate, I think, on  
3 this Commission, some of which no one will ever want to  
4 duplicate, very well done, Commissioner Eggert.

5 VICE CHAIR BOYD: I want to join that, but I do  
6 want to say that, now that he has proven his capacity for  
7 work, let us not forget that in his assignments in the  
8 future.

9 MS. BELLOWS: We'd like to take a moment to say  
10 thank you, too. And, I'm tired, I don't really care  
11 about your baseball team! So, with that said, we are  
12 very excited to be a part of what's going on right now in  
13 California, in America, and seeing a very active  
14 renewable market, and to participate here is just an  
15 amazing thing, very personally, for me. Keep in mind  
16 that the Calico Project has been underway since 2004-  
17 2005, so it's an amazing day for Stirling Energy Systems,  
18 and I thank you very much for that. The other things to  
19 keep in mind, you know, we talked about all the  
20 contributions the project is making to the renewable  
21 goals here. I think a project of this size is something  
22 to be proud of for all of us, all of the contributors,  
23 Interveners, as well as everyone who contributed. There  
24 are a number of people that we need to say thank you to,  
25 so I have a laundry list here, but first, of course, I'm

1 going to say thank you to the Hearing Officer. Also, I  
2 thank the Committee, you know, you guys were with us the  
3 entire time and we appreciate that, and obviously the  
4 decisions you put in front of us to make and changes you  
5 inspired us to make were tough, but we did it. And you  
6 know, as we talked about before, the project is a  
7 stronger project today for those changes, and I  
8 appreciate that. So, in terms of people I want to thank  
9 here at the CEC is Terry O'Brien, I don't know if he's  
10 here anymore, he gave up on us, but he did an awful [sic]  
11 job with his staff - awesome job! I have to say awesome  
12 because he changed our tire on the side last night, so,  
13 definitely not "awful." Christopher Meyer, you were  
14 amazing and really looking forward to working with you as  
15 our Compliance Manager, as well as the other members of  
16 the staff who worked with us through this process and who  
17 also will continue with us and help us through meeting  
18 the compliance conditions as we move forward. Also, the  
19 Court Reporter, particularly that night we were there  
20 until 4:30, amazing, what can you say? BLM, I think  
21 you've seen and we've said before what an amazing job  
22 they did for us, Jen Stobaugh, the crowd at Barstow, I  
23 mean, you could not have done it without Chris Otahal,  
24 without Rich Rotte, without Jean Shearer, and Nickie and  
25 everyone else involved, also the Desert District, Jim

1 Abbot, just an amazing job on their part and support.  
2 Fish and Wildlife, Ashleigh Amedee, really, I appreciated  
3 all the guidance from them in terms of, you know, what to  
4 do with this site on the Desert Tortoise issues, and how  
5 to deal with things, and all the different conference  
6 calls around that were amazing, and very cooperative, and  
7 we were able to get things done with them. Same thing  
8 with Fish and Game, Kevin Hunting, Scott Flint, who has  
9 met with you, Becky Jones, Tonya Moore, all of them have  
10 been active participants with us, and we really  
11 appreciate the work that they put in on this. And again,  
12 the project is stronger for their participation. The  
13 DOI, Steve Black and Janea Scott, the Governor's Office,  
14 Michael Picker and Manal Yamout, very helpful for us, and  
15 our clients, our one client on this project, Edison, from  
16 the DPA side, a lot of support from them starting with  
17 Stu Hemphill, Mike Marelli, Dan Chase, Cathy Mendoza,  
18 just to name a few, and on the transmission side working  
19 through the LGIA issues with us, with Jill Horswell and  
20 Gordon Brown, who really did help us bring this project  
21 home in a very fast fashion. On our team, in fact, a sad  
22 thing about these projects is, when you're through  
23 permitting, you kind of have to bring in your team and  
24 reorganize a little bit, so I know I worked with you on  
25 those 10:30 phone calls to talk about client issues, but

1 I'll try to figure it out. So, first, I want to thank  
2 Sean. You know, I came into this from Latin America,  
3 Sean, and he walked me through what a PPA in California  
4 should look like, what an LGIA should look like, and  
5 explained to me what CAISO was, and I could not have done  
6 it without Sean in doing that. And obviously you were  
7 part and parcel of this, anyway, and you were behind my  
8 back and beside me the whole way. Lori Jones, Irene  
9 James, both very active parts in this process, very  
10 active members in the compliance process now, working  
11 with you, my engineers, Bob Bile, Bob Geesie, and Mike  
12 Kanahalbe, you know, I have to give them credit, every  
13 time I've come back from Sacramento, they've seen me  
14 round the corner, they get up, they go the drafting  
15 table, they draw out the plans, and say, "All right, what  
16 happened?" And they're always willing to answer my  
17 questions, "Why not?" "Well, can't you do it this way?"  
18 They did an amazing job. URS, everyone there, amazing  
19 job, you guys were fantastic. And, Angela, anyone that  
20 can keep up with me and speed of e-mails, you're my kind  
21 of gal. So, Theresa, Desert Tortoise expert who really  
22 got us through this, Angela, Corinne, Darin, everyone on  
23 the team was an amazing contributor for us - Ella, you  
24 know, what can I say? Cameron, Julie, and all the others  
25 that helped us at Bingham, thank you so much. Bob

1   Therkelson, who explained to me when I first came on  
2   board what on earth the CEC process was, and I don't  
3   think I really understood it. Thank goodness, I do now.  
4   And also, Alan Thompson, you were amazing in helping us  
5   through this and giving us your sage wisdom on different  
6   points of where things were going, so we appreciate that.  
7   So, again, thank you very much. It's been an amazing  
8   process and I do think that, as a result of all the  
9   [inaudible] [1:30:11], we have a much stronger project  
10  and I feel better and very good about this project.

11               CHAIRMAN DOUGLAS: Well, thank you. I am going  
12  to quickly adjourn the meeting so some of you can get to  
13  your baseball game, and others can get to our next  
14  meetings. So, thank you.

15           (Whereupon, at 4:12 p.m., the business meeting was  
16   adjourned.)

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